

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
IN RE NEW YORK CITY POLICING : Docket #20cv8924
DURING SUMMER 2020 DEMONSTRATIONS :
: New York, New York
February 11, 2022
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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HONORABLE GABRIEL W. GORENSTEIN (THE COURT):

Okay, you can call the case.

THE CLERK: This is In Re: New York City
Policing During Summer 2020 Demonstrations, case number
20cv8924.

Will counsel, please state your appearances for
the record, starting with plaintiffs.

MX. REMY GREEN: Good morning, this is Remy Green
from Cohen & Green, representing the Sow and Hernandez
plaintiffs. And for the recording, I should appear in the
transcript as Mx. Green spelled M-X-period, rather than Mr.
or Ms., thank you.

MR. TRAVIS ENGLAND: Good morning, this is
Travis England from the Office of the New York State
Attorney General on behalf of The People of the State
of New York.

MS. JESSICA PERRY: Good morning, this is
Jessica Perry with the New York Civil Liberties Union
Foundation appearing on behalf of the Payne
plaintiffs.

MR. ROB RICKNER: Good morning, this is Rob
Rickner, Rickner PLLC, appearing for the Sierra plaintiffs.

MR. ROBERT BALIN: Good morning, Your Honor,
this is Robert Balin of Davis Wright Tremaine,

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1
2 appearing on behalf of the Gray plaintiffs.

3 MR. ANDREW STOLL: And, good morning, this is
4 Andrew Stoll for Cameron Yates.

5 THE COURT: All right, and for defendants?

6 MS. DARA WEISS: Good morning, Your Honor, this
7 is Dara Weiss from the New York City Law Department.

8 MS. GENEVIEVE MILTON: Good morning, Your
9 Honor, this is Genevieve Milton also from the Law
10 Department.

11 MS. JENNY WANG: Good morning, Your Honor,
12 this is Jenny Wang also from the Law Department.

13 THE COURT: Okay, let me remind everyone we're
14 being recording but any other recording of the proceeding
15 is forbidden, as is any transmission, dissemination or
16 rebroadcast.

17 We're here based on a number of matters and I
18 have an order in my mind I'd like to go through them,
19 basically from smaller in scope to larger in scope. You
20 did have something that did not, was not the subject of an
21 order, it was something from Mr. Rankin, number 386, which
22 sounds like it's being solved by stipulation so I'm
23 assuming that's going to be given to me in due course and
24 I'm not going to be concerned about that further.

25 The next one that I want to go to are, hold on a

second, the two unopposed letters for which there are proposed orders 370 and 374. I am not sure there's a lot to say but if the City wants to say anything about the phrasing of the orders that's fine, anything on 370?

MS. WEISS: Yes, Your Honor, this is Dara Weiss. On 370, which is the order on the *Payne v. de Blasio* case, I just, there were two things. First, we respectfully request that Your Honor permit the defendants to assert objections on the, the discovery demands that, that were not responded to. although we were late, it's part of I guess the overall issue that we're having in this case and that has led to everything that we're here for today. The plaintiffs are absolutely bombarding the defendants with letters and emails and letters to the Court and requests for meet and confers. And these discovery responses fell sort of into the category the rest of these issues were in that we're simply unable to keep up. There was no malice, it was inadvertent that responses weren't done, the attorney from our office who was assigned to draft the responses to these was wrapped up in a lot of other things. She communicated with plaintiffs on a number of occasions that she needed a little more time, it just, unfortunately, did not get

done. So for that we apologize to plaintiffs and to the Court but we think that that's such a strong remedy of not allowing the defendants to interpose objections is certainly a lot.

We're really happy to produce responses and the documents that our clients have in a short period of time, but we would like to be able to pose objections. The second thing is plaintiff have put in their proposed order that full responses should be submitted by February 15th which is five days from today and considering all the other discovery that we're trying to get out to plaintiffs and the fact that we're in the middle of depositions, we just don't think that that is a reasonable time period for defendants to be able to respond.

THE COURT: All right, before I hear from plaintiffs, on the first point, it's completely unacceptable to not comply with Court orders and to not comply with my individual practices. There are not so many letters coming in to me that that shouldn't be an obligation that you keep paramount in your mind, and if you can't comply with my orders and you can't comply with my individual practices, it really makes you question whether you're doing

1
2 everything else you're supposed to do in terms of
3 dealing directly with the plaintiffs when I'm not
4 there to oversee it. So it's completely inexcusable
5 and I'm surprised you don't understand that.

6 So in terms of the merits of this particular
7 request, I didn't just, you know, endorse the letter,
8 as you saw, I allowed you to make, to address it here
9 at the conference. So if there is something that is,
10 you on the merits say you shouldn't have to produce,
11 I'm ready to hear from you, we're going to do it right
12 now. If it's simply a timing issue, we can talk about
13 that.

14 MS. WEISS: Well I think on the merits for the
15 second request, plaintiffs had requested that we
16 attempt to identify some officers by photographs which
17 are fine, you know, we do that quite often, we send
18 those photos to our clients and see if there is
19 anything in them that allows them to attempt to make
20 an identification. And we have no problem doing that
21 quickly but there is no guarantee that they will be
22 able to, to identify them, so I just want to make that
23 clear. And I think I'm (indiscernible), I'm sorry, I
24 just want to double check that, I am, this is the
25 second set.

I think that a big part of the issue though is, is the document request, they're asking for all, in their order they're asking for all of the documents. It's a lot of stuff, a lot of stuff, a lot of which has been produced already, but for us to produce all of something, it kind of puts us in a bad position because there's no way to guarantee that we have all or can produce all of something. We could produce what's in our possession, what we can locate, but putting in the word all kind of sets us up to fail because if something is not there that we find later, you know, based upon the prior acts of plaintiffs' counsel, it's, they're going to, we fear that they're then going to Your Honor and complain that we didn't produce all. We know we have an ongoing obligation to supplement any discovery responses and we will, of course, do that, but it's a matter of being ordered to produce the documents in response to the request that can be located after the searches that our clients do.

A lot of the document request in this supplemental request are already the subject of a lot of other document requests in other of the consolidated cases, be it their consolidated discovery demands or discovery demands that have been sent by

individual plaintiffs' cases so there's really probably not anything here that hasn't been either produced or was the subject of a meet and confer that we had just this past Wednesday. I'm looking at it now, Your Honor, and it's really, it's really things that have been dealt with in other cases in consolidated demands during meet and confers and it, these -- and just one final thing, if we're unable to identify these two officers then we're certainly not going to be able to provide documents related to them. To the extent that we can identify these two officers, as we have been doing throughout this litigation, we'll provide these types of documents that are related to that officer.

THE COURT: Okay, I think I'm, I think all I heard was that if you can't locate the documents you won't be producing them, and that's, I'm going to put in the order that if there is some category here you're not producing you have to explain that in writing at the time you make the production, I think that will solve that.

Anything else on the plaintiffs' side, I guess it is, let's see, hold on, Ms. Perry maybe who signed this letter, whomever is speaking about this?

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2 MS. PERRY: Yes, Your Honor, I'm speaking
3 about this for the Payne plaintiffs, good morning. I
4 think the only, the only things I would say are the,
5 you know, in the second document request, you know,
6 the documents that we've requested are not documents
7 that we, that have been produced yet and we, and there
8 is also not language in the second document request
9 that requests all documents, so I just wanted to note
10 that, note that for the record.

11 But, and I guess I'll just briefly --

12 THE COURT: Well, I mean your proposed, your
13 proposed order says all documents, I think that's
14 what set this off.

15 MS. PERRY: I understand, Your Honor, that's
16 understandable. In that case, I don't think we have
17 any, anything else to respond to that Ms., that Ms.
18 Weiss raised.

19 THE COURT: Okay. All right, so and does this
20 relate to any upcoming depositions, this particular
21 document production, that's a question for Ms. Perry
22 or Ms. Weiss?

23 MS. PERRY: We have noticed a number of
24 depositions that have not yet been scheduled of I
25 believe three officers who, who are identified in both

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2 the second and third requests, but those depositions
3 have not been scheduled and we're still sort of been
4 conferring over defendants about getting those depositions
5 scheduled.

6 THE COURT: Okay, and the reason I'm asking is
7 that I want to frontload document obligations onto the City
8 that relate to, you know, imminent depositions. So it seems
9 like this is not something that should be frontloaded. I'm
10 not saying, you know, we should wait some lengthy period but
11 this doesn't have to be done in the next few days, would you
12 agree, Ms. Perry?

13 MS. PERRY: Yes, we, I agree in that we, the
14 depositions are not currently scheduled and we're currently
15 in the process of undertaking other depositions. But I will
16 just note that, you know, a pattern that we've noticed in
17 this case is that for individual fact witnesses and
18 individual cases, those, the discovery relating to those
19 cases often gets put on the back burner and then we're left
20 in a position of kind of attempting to track down discovery
21 that we need to make out our individual claims.

22 And so we do think that a deadline of five days is
23 reasonable, and given that defendants have had not over a
24 month since they responded to give us the response to the
25 third request, we do think that, you know, to the extent

1 PROCEEDINGS 13
2 they have any documents in their possession right now they
3 should be produced in short order.

4 THE COURT: I'll keep that in mind, I'm going to,
5 when I issue the order is when I'm going to fill the dates
6 in so you'll see it when it comes out.

7 MS. PERRY: Thank you, Your Honor.

8 THE COURT: Okay, our next one I guess is from
9 Mr. Rickner, it's number 374, I'm going to start with
10 the defendants to see if there is anything they want
11 to say about the wording of the order?

12 MS. WEISS: Yes, Your Honor, this is another
13 issue with the word all. We can certainly produce
14 documents that we have and that are in our possession,
15 the defendants, but that doesn't necessarily account for
16 all that may exist. So I just wanted to point that out
17 again, and --

18 THE COURT: If I can just interrupt you, Ms.
19 Weiss, I'm just a little thrown off when you say we
20 can produce things in our possession but that's not
21 necessarily all. As I'm sure you know, Rule 34 only
22 requires you to produce things that are in your, I
23 forget the word, custody, possession, so what is it
24 you're getting at?

25 MS. WEISS: I do think, as I said before, it

1 kind of sets us up to fail because it's in, as we've
2 noticed throughout the litigation of this case,
3 plaintiffs very often revert to saying that things
4 should exist or they can't believe things don't exist.
5 And then when the defendants produce whatever they
6 have in their possession, custody or control,
7 plaintiffs often complain that that's not it, this is
8 not all. They certainly can't know what is in the
9 defendants' possession yet they claim to. And then if
10 the defendants supplement their response afterwards because
11 they have then found something else, plaintiffs tend
12 to complain that we violated an order or an agreement
13 because the first time we made a production we didn't
14 produce all.

15
16 So that's kind of our concern. I understand
17 what the Federal Rules say and we can only produce
18 what we have and we're required to supplement but we
19 do. But that just, it makes another place for
20 plaintiffs to complain and then, once again, write
21 emails and letters and go to the Court which we're
22 really hoping to try to have plaintiffs cut down on.
23 Because, as I think you've seen in the letter that I
24 submitted last night, it's, it's a lot.

25 THE COURT: Ms. Weiss, I have to say this line

1 of argument makes no sense to me. From what I've
2 gathered, what actually is typically happening is that
3 City is producing some materials, the plaintiffs are
4 noticing it's not all, you're conceding, as you just
5 did now in your discourse that you then come up with
6 it, and they're right, you did violate the order. Now
7 it's possible you did a reasonable search in which
8 case it's justified, but it's also possible you didn't
9 do a reasonable search and the only reason you came up
10 with the other stuff was because the plaintiffs
11 happened to know that it existed.
12

13 So no one is being set up when they're being
14 told to produce all documents on a topic, that happens
15 every single day in every single litigation. Parties
16 then do a reasonable search and they don't feel
17 they're being set up. They produce the documents and
18 usually there's not an issue, and when there is an
19 issue then we solve it through the mechanisms. And,
20 you know, maybe we'll talk later about whether those
21 are working or not. But you're making me very
22 concerned with these objections, the idea that you are
23 incapable of producing, of doing a reasonable search
24 to produce the documents, it makes no sense.

25 So there's nothing on the substance of this

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2 then in terms of scope or date of the proposed order?

3 MS. WEISS: No, those, these are documents
4 that we will produce. We would like a date further out
5 than February 18th, that's a week from now, we would
6 request 30 days to provide these documents.

7 THE COURT: Mr. Rickner, is there a deposition
8 as to which these are going to relate that's coming
9 up?

10 MR. RICKNER: Well, there may, it depends on
11 what's in the documents so it's hard for me to know.
12 We know for a fact that Dermot Shea weighed in on the
13 sanctions on Mr. Mullins so, and I don't believe his
14 deposition is within the next 30 days so that isn't
15 the issue. But the problem is, is that I suspect there
16 were an awful lot of high level people involved in
17 this decision, I mean fire, the recommendation to fire
18 the head of the Sergeants Benevolent Association is
19 not a minor event at the NYPD, so I don't know. I
20 don't know who was involved with that because I can't
21 see under the hood because I don't have the documents.
22 So there very well may be depositions that are
23 currently scheduled and when we get the documents
24 we're going to say, oh, no, I would have liked to have
25 used this on some other person's deposition, like the

1 PROCEEDINGS 17

2 Dowling deposition that's going right, going on right

3 now. It also might be relevant to the 30(b)(6)

4 depositions which are being scheduled, you know,

5 within the next 30 days or taking place within the

6 next 30 days, at least for some of them.

7 So it's hard for me to answer the question and

8 it kind of highlights the entire problem we have,

9 which is I don't know what there is and what there

10 isn't until the City gives it to me. And, you know, I

11 guess I would just say that if it does turn out that,

12 you know, there are key documents to a witness whose

13 deposition has already taken place, that we be able to

14 recall that witness because we've certainly been

15 diligent.

16 THE COURT: Right. Well, I mean the, I mean

17 the email searches have happened, and that's a done

18 deal. So this seems like it's documents mainly about

19 an investigation, is that, was that what you're

20 seeking, Mr. Rickner?

21 MR. RICKNER: Yeah --

22 THE COURT: Like these are actual

23 investigation reports or something like that?

24 MR. RICKNER: Yeah, I mean my assumption is,

25 is that there's, well we know there's the CCRB

1 investigation, in fact, several of them. I believe
2 there was also an internal NYPD investigation of some
3 kind, as well, I know less about what that looks like.
4 So, yes, so that is the, I guess sort of the meat and
5 potatoes of what we're looking for. But, again, there
6 may be other things that are relevant and I don't know
7 enough about how the NYPD structures these things to
8 know specifically what documents to look for. For
9 example, if there is a process that the NYPD goes
10 through when they decide to override the CCRB's
11 decision to fire somebody and go to a lesser sanction,
12 if there's, I don't know what that process is, but if
13 it's out there and it's document that's also included
14 in our requests.

15
16 THE COURT: Ms. Weiss, what do you know about
17 the burdensomeness of this request?

18 MS. WEISS: I, I don't know, to be honest,
19 Your Honor. We had originally objected to providing
20 these documents for a number of reasons, not including
21 burdensomeness, we'll now provide them. CCRB
22 documents I know are fairly quick and easy to get,
23 internal NYPD investigations not as easily acceptable.
24 And I know from other internal investigation documents
25 that the plaintiffs have requested in this case,

1 PROCEEDINGS 19
2 there's many, many, many of them that they take quite
3 a bit of time to get and that unit is very, very
4 backed up right now. You know, we could certainly ask
5 them to put something to the head of the line, but
6 then it's just going to slow down the process for the
7 other ones that, that the plaintiffs have asked for in
8 these cases, you know. And, additionally, there's
9 likely --

10 THE COURT: What other ones are you talking
11 about? Are you talking about other incidents regarding
12 arrests and so forth?

13 MS. WEISS: Yeah, other IAB and internal NYPD
14 investigations into arrests and uses of force for
15 these protests as well as I believe plaintiffs had
16 requested individual IAB histories for defendant
17 officers and witness officers. I don't have all of
18 those requests in front of me right not, I apologize,
19 but I do know that the IAB section has been working
20 very hard and as quickly as they can to get us any
21 other outstanding sort of disciplinary documents for
22 other issues in these cases.

23 And if I may, Your Honor, although I
24 understand that allegations of bias policing are a
25 part of some of the plaintiffs' claims in these cases,

1 PROCEEDINGS 20
2 I don't think that they are some of the bigger issues
3 for the overall consolidated cases. So although there
4 is going to be one 30(b)(6) deposition on this issue,
5 there's a number of other 30(b)(6) depositions on a
6 lot of other I think more sort of overall and pressing
7 issues in these cases.

8 So I don't want to belittle the importance of
9 this issue, but I think it's just a smaller one
10 overall for these consolidated cases as opposed to
11 ones like, you know, improper training, things like
12 that.

13 THE COURT: Is the 30(b)(6) on this topic
14 scheduled?

15 MS. WEISS: I know there's a witness, I don't
16 know when that witness is scheduled for.

17 THE COURT: Does someone, Mr. Rickner, do you
18 know?

19 MR. RICKNER: I, unfortunately, I do not have
20 that information at my fingertips but I will say that
21 the lion's share of these have been scheduled to be
22 completed before the end of March. So there's a good
23 chance that it is scheduled and, you know, it's not
24 just getting the documents, we need to prepare and
25 think about them in order to make proper use. So

giving them to us, you know, what happens to be two days beforehand doesn't necessarily do much good.

I mean also to the other point, this is protests as part of the Black Lives Matter movement, racism among high level people at the NYPD is of paramount importance. This isn't something that could be I think shuffled to the side or just dealt with later because it's not a big issue, it is a big issue. And also the idea that this Court's order would sort of just go into the morass of regular discovery is a false equivalence, this is a Court order, it goes to the top of the pile, it gets paramount importance. And, frankly, it's important over emails and other requests and other things they're doing.

THE COURT: Well I think they're talking about other productions in this case so I'm not sure this particular, I mean I don't know but I'm not sure this particular production is more important than other productions they're doing in this case, is that what you're saying?

MR. RICKNER: Well, I'm saying that the other productions may not necessarily be part of a Court order and I do think, in general Court orders should take priority. But another --

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2 THE COURT: No, no, they're willing to do
3 that, what they're saying is if you do it then now
4 other things are going to be delayed. I mean I can't
5 believe this is going to delay much but that's their
6 point. They're not saying that it won't happen,
7 they're saying that it will cause delay in other
8 things. So my question is, you know, what, is this of
9 greater, you know, temporal importance than the other
10 things in terms of the need for the documents
11 (indiscernible), that's all I was trying to figure
12 out.

13 I don't think it's going to make much
14 difference. I'm going to, I'm going to give a date in
15 the next week or two to produce these so I'll figure
16 them out at the end of this. I think we're okay on
17 this now.

18 MR. RICKNER: Yep, understood, thank you, Your
19 Honor.

20 THE COURT: Okay, my next issue is 379, we're
21 going to end with the prior protests. So, Mr. Rickner,
22 I think this was your letter, right?

23 MX. GREEN: No, I believe this is mine and
24 this is Mx. Green, Your Honor.

25 THE COURT: I'm looking at 379, it has Mr.

1 PROCEEDINGS 23

2 Rickner's signature on it.

3 MX. GREEN: Oh, sorry, prior protests, 379, my
4 mistake.

5 THE COURT: No, no, I said prior protests was
6 last, you're 369.

7 MX. GREEN: Oh, I am so sorry.

8 THE COURT: Okay, no problem. Mr. Rickner,
9 this is you, right? Mr. Rickner, you may be on mute.

10 MR. RICKNER: You're right, I was on mute,
11 thank you, Your Honor.

12 THE COURT: Okay.

13 MR. RICKNER: So going to the, the audit trail
14 logs, I mean really this is two motions in one I
15 suppose, one is for sanctions and one is to actually
16 get the information that we've been seeking for many
17 months. I can address those in either order that the
18 Court would prefer.

19 THE COURT: And let's end, let's have
20 sanctions last.

21 MR. RICKNER: Okay, well, I think the first,
22 the primary argument they're making is burden, and
23 this is very troubling because I thought we had
24 already settled this issue. After the motion that we
25 filed in August the Court ordered a conference with

1 people from the NYPD. This was actually a really
2 productive conference, we learned a lot, and the NYPD
3 conceded that bulk exports of audit trail logs weren't
4 that hard, they just had to set up their system and
5 turn off or turn on one particular function and then
6 they could do bulk productions.
7

8 So on September 28th the City through Alyssa
9 Jacobs, counsel who was on this case, emailed and they
10 said, and this is a quote in the email, September 28th,
11 "I have spoken with the clients who have agreed that
12 they would permit bulk downloads in these
13 circumstances, and so we will withdraw the
14 burdensomeness objection to the extent it was based on
15 having to download each audit train individually."

16 Now following that, in two separate letters,
17 in the January 18th motion which resulted in the order
18 which got us where we are today, as well as my motion
19 regarding the, you know, the failure to comply with
20 that order on February 3rd, in both of those I said
21 specifically, the only thing left here to talk about
22 is relevance. The City did not jump in on either of
23 those letters to say, no, Mr. Rickner is wrong, we
24 still have another burdensomeness argument. And now I
25 get the letter, as did the Court last night, and we

1
2 see a burdensomeness argument.

3 This is really a core problem in this case,
4 which is we cannot get the City to take a clear and
5 coherent point and we don't find out what their point
6 is until, until effectively motion practice and even
7 then, in this case, it's contradictory to what I
8 thought was a pretty clear waiver of this argument
9 beforehand. It's really been waived two times, once by
10 not responding to the February 3rd letter or the
11 January 18th letter, and once through the September
12 28th email that I thought settled the burdensomeness
13 issue.

14 And also, above and beyond that, they're
15 wrong, this isn't burdensomeness. You can look and see
16 the audit trails that we've attached to the motion and
17 you can see there's tagging and, in fact, in some
18 cases even tagged to my case, to the Sierra
19 plaintiffs. And so they can use those tags through
20 the evidence.com system which is designed to tag and
21 catalog large amounts of bodycam footage. It's
22 sophisticated program, I've read multiple portions of
23 the manual, that's why I was so confident that this
24 could be done relatively easily when I went into the
25 meet and confer with the NYPD, and so you can look up

1 those tags and do bulk exports. I actually sent, I
2 attached to one of my motions the part of the manual
3 where it shows the little box you click to include the
4 audit trail logs in your bulk export.
5

6 And I think the final portion is, if the City
7 has really produced these in such a haphazard manner
8 that they can't even figure out what it is that they
9 produced, that's on them. That's their problem, that
10 is a mess that they have created through their own
11 actions and it shouldn't now be any kind of barrier or
12 burdensomeness argument.

13 So, in sum, I think we should get the audit
14 trail logs, I think we should get them relatively
15 soon, and it's important that we get them soon because
16 we have a lot of people watching these body worn
17 camera footage videos, and the audit trail logs give
18 them a window into other information they should also
19 be looking at like CCRB files, summonses, other officers
20 who were there, explained in my letter. That makes the
21 process, the review, easier, it makes it more thorough, it
22 makes it easier to understand what you're looking at.

23 So really, I think we're being actively
24 prejudiced by not having this, these audit trail logs
25 right now.

THE COURT: I need a little bit more background, Mr. Rickner, I think the letters assume a level of knowledge about the camera footage that I don't think was presented to me, or if it was it was presented in some other form at another time that I can't locate. So what, let's start from the beginning, what have you, what did you get and what was the volume, and what did it look like? In other words, did you get like, was it 600, I've seen the word 600 and 1,000, I'm not sure, what did you get, what did it look like, and how does the audit trail logs relate to it?

MR. RICKNER: Okay, so there's a few pieces to that. Initially, we got the body worn camera footage produced to us through a digital system where they would just give us the video files. The video files --

THE COURT: Stop right there.

MR. RICKNER: Okay.

THE COURT: This happened when and about how many?

MR. RICKNER: This happened during the course of the line officer depositions, so if my memory is correct, we're talking about starting June or July of last year.

THE COURT: Okay.

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MR. RICKNER: And they were pegged to, well at the time we thought we were getting footage that was relating to our specific plaintiff, like footage that would show our plaintiff, instead we got a larger production that I think was more like, well, we think this might have to do with your plaintiff. And we also, and so there was some repeats, but they came in large blocks, I think probably the largest of them for Sow was over 100 and I would say we got approximately 50 or so of these, of these productions or these videos.

The --

THE COURT: Wait, hold on. Hold on, stop, stop, stop.

MR. RICKNER: Sorry.

THE COURT: You got a total of 50 on someone, is that what you're saying?

MR. RICKNER: I'm saying each --

THE COURT: Yes, go ahead.

MR. RICKNER: Each team got their own production of body worn camera videos that the City said were related to either a particular plaintiff or particular deponent. It's approaching 1,000 total, I think, and it came in multiple different tranches and

1 PROCEEDINGS 29

2 I think there's also some substantial repeats there.

3 THE COURT: Okay, I assume, Mr. Rickner -- Mr.
4 Rickner, I assume you're speaking on behalf of all
5 plaintiffs now, right, I mean in terms of this issue?

6 MR. RICKNER: Yes.

7 THE COURT: Okay, good. So just so I, let me
8 just get it in my head, there were approximately 1,000
9 productions, some of which may have been duplicates,
10 last summer, of, and a unit I guess is one particular
11 officer on a particular day, that counts as one?

12 MR. RICKNER: Yes, that is almost always
13 correct. If the officer turns their camera on and off
14 more than once, there would be more than one video
15 generated, but for the vast majority, you know, each
16 unit is one video, the officer clicks on the body worn
17 camera, it films, clicks it off, they put it in the
18 docking bay and it gets uploaded automatically to
19 evidence.com.

20 THE COURT: Okay. And what information did
21 you have with respect to any given video, for example,
22 officer's name, date, time, location, did you have all
23 that or not?

24 MR. RICKNER: We could use, date we absolutely
25 had, although the time was off because of the way that

1 the videos were produced, although we could surmise
2 that it was always off by about four hours. That's
3 actually something that's corrected in the audit trail
4 logs. And obviously the date, we knew which protest it
5 was. We generally knew the location, that was not
6 universally true which is why we were pursuing GPS
7 data because sometimes we couldn't figure it out. And
8 we sometimes knew the officer but often didn't, they
9 produced a spreadsheet that you could look at the
10 times of the video and click through and try to
11 guesstimate as to which officer may have been
12 producing, may have been wearing that particular
13 camera. But we definitely couldn't figure it out for
14 all of them and, in fact, when we chose the examples
15 we picked ones that, for the most part, we couldn't
16 figure out. So sometimes we could figure out who the
17 officers were with a fair amount of effort, and
18 sometimes we couldn't figure out their names.

20 THE COURT: Okay, so the, I'm trying to find,
21 do you have a letter with the sample audit trail logs,
22 do you remember the docket number?

23 MR. RICKNER: That was the, that was the most
24 recent one and, hold on --

25 THE COURT: 385 maybe?

1 PROCEEDINGS 31

2 MR. RICKNER: 385, yes.

3 THE COURT: Okay. All right, so let me just
4 look at -- so this very first exhibit to your letter
5 is an audit trail log?

6 MR. RICKNER: Yes, that's correct.

7 THE COURT: Evidence audit, evidence audit
8 trail, okay.

9 MR. RICKNER: Yes.

10 THE COURT: So is this associated with a
11 particular recording?

12 MR. RICKNER: Yes, it is.

13 THE COURT: Every audit trail log pertains to
14 one recording.

15 MR. RICKNER: Exactly.

16 THE COURT: And so someone at some point did
17 something to put all this information and associate it
18 with a recording, is that what happened?

19 MR. RICKNER: Yes, although it's almost, I'd
20 say, even better than that because the way the
21 evidence.com evidence system works is if you look
22 there's a source, a particular device name, it starts
23 with an X, it says X81 and a string of digits.

24 THE COURT: Yep. Yep.

25 MR. RICKNER: That's a specific camera, so

1 after their shift the officer who is wearing the
2 camera puts it in the docking bay, it's automatically
3 uploaded to evidence.com, it's supposed to be tamper
4 proof up until that point, so really you get the nice
5 pristine body cam footage. And then the audit trail is
6 actually automatically generated by the system,
7 obviously there's additional information that's added
8 later like the tags, but we can look at the camera footage
9 and we see that device name, the X81 and then, you know,
10 ideally when we get all of the audit trails, if you, our
11 order is granted, we can control that search for the
12 device name and, boom, now we get the history of that
13 piece of body worn camera footage.

14
15 And it's meant to work like the evidence locker
16 for physical evidence, right, so you can tell everything
17 that's happened. If there's been an excerpt that's
18 loaded, that's identified, if there's tags, that's
19 identified. And, you know, as it says in the letter,
20 there's various ways this is useful.

21 THE COURT: Right. So the camera, this audit
22 trail log is not associated with any particular date, it's
23 associated with a camera, and then each date it gets
24 docked the date gets added trail, is that it?

25 MR. RICKNER: No, that's not it, each video

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generates its own audit trail log, so, but the camera and the camera being placed in the dock is sort of the triggering event, but then every single file that they produced on evidence.com has an audit trail that looks just like --

THE COURT: I see, I'm just trying to understand, so this audit trail is all about one particular piece of footage, in this case the first one it looks like is an hour and a half long and it's all the things that happened to this footage on evidence.com?

MR. RICKNER: Yes, including --

THE COURT: Right, okay.

MR. RICKNER: Yes.

THE COURT: Go ahead.

MR. RICKNER: One more point that I think is important, all of these different tags like the categories, demonstration, civil disobedience, those are all searchable because this software is designed, and it's well made, it's designed to keep track of this information. And so --

THE COURT: Okay.

MR. RICKNER: You can search it and then you can bulk download it.

THE COURT: Okay, so when, I'm just trying to

1 PROCEEDINGS 34

2 figure out what, unfortunately you may now, now that I

3 understand this a little better you may need to repeat

4 some things. So you are looking for the audit trail

5 logs for the material that was already produced to you

6 last summer, is that it, for that thousand videos --

7 MR. RICKNER: Yes.

8 THE COURT: Of which many are duplicates?

9 MR. RICKNER: Well we believe some are. I

10 should mention, because we sort of got cut off a

11 little in our conversation, there is then a second set

12 of body worn camera productions or second

13 (indiscernible) body worn camera production, we, in

14 effect, complained that we didn't think we had

15 everything and then we got another, much more

16 recently, I think in the last two months, a production

17 of 600 or so body worn camera videos which some were,

18 some were already produced according to the City

19 although we don't know which ones without doing a

20 manual compare and some were new. So the universe

21 we're looking for is, is all of those really. If

22 they've produced it to us we would like the

23 accompanying audit trail so we can start working out

24 what we've got.

25 THE COURT: Right. Okay, all right, so I'll

1
2 hear from the City.

3 MS. WEISS: Yes, Your Honor, it's Dara Weiss
4 again. I just want to clarify a couple of things that
5 Mr. Rickner said. The first actions of body worn
6 camera footage were produced actually well before the
7 line officers' depositions, they were produced, if I'm
8 not mistaken prior to the plaintiffs' depositions.
9 Plaintiffs' counsel insisted that they be provided
10 with body worn camera footage before each of their
11 plaintiffs were deposed. Because we didn't have a
12 system in place, an electronic system in place yet for
13 providing them, we actually just sent the videos
14 themselves through a secure email system. They hadn't
15 been Bates numbered in any way or with any other
16 identifying information, we were just trying to get
17 them the videos as quickly as possible so they could
18 have them before their clients' depositions.

19 Then when plaintiffs noted they were having
20 trouble figuring out certain information about the
21 videos, we started sending them spreadsheets that
22 showed the name of the video, which officer was taking
23 it, and there might have been a little bit more
24 information, I think the time of the, the length of
25 the video. And then plaintiffs asked for the

1 production of these same videos through an electronic
2 system where they would be Bates numbered and further
3 identified so we did that, which is why there are
4 duplicates of some of the videos. And I am pretty sure
5 that when they were sent they were noted that these
6 are just reproductions of the videos that were
7 provided earlier.

8
9 It's entirely possible that there are
10 duplicates of videos or things that seem like
11 duplicates because the way the system works is that if
12 a certain officer, if their bodycam video is searched
13 the system is going to also provide the names of
14 officers who are within a certain distance of that
15 target officer and who also had their video on, so we
16 would have provided that as well. So that can
17 certainly make it, if two officers were near each
18 other recording something, it would certainly make it
19 look like it could be the same video but it likely is
20 not.

21 We did provide the sample audit trail logs and
22 it was when Mr. Rickner brought it to our attention
23 during a meet and confer we immediately sent it over.
24 But as you can see, there's a lot of information on
25 these audit trails that's completely irrelevant and

unnecessary. There certainly is the information in the beginning about the officer's name and when they took the video and when they downloaded it, but the bulk of this information is what happened to it afterwards, mostly as a result of obtaining it to provide in discovery in these lawsuits or for CCRB or other internal purposes.

If plaintiffs, it seems like the reason the plaintiffs are claiming they need these audit trail logs is so they can tell one video from the next and two took a video and if they'd seen it before in their review. But these audit trail logs really provide substantially more information that's just not relevant or necessary for these cases. As mentioned, we, the City provided spreadsheets that gives --

THE COURT: Ms. Weiss, if I could just make life simple, as long as there is some information on here that I find is relevant, I assume it's easier for you just to produce the whole thing than to go over it line by line with a black felt marker taking out some potentially irrelevant material.

MS. WEISS: Well, certainly, Your Honor, if you're looking at the audit trail you could see what a burden that would be. But I just, although, I

1 personally was not aware of the bulk download issue, I
2 do know that it's not difficult to actually press the
3 button and print these things, but there are so many
4 of them that we have produced that we've given the
5 relevant information that I don't think that there's a
6 need to, you know, kind of press the button for
7 everything.

8
9 The other thing that I'm concerned about is
10 that although it may be true that you can simply do a
11 search by a category such as demonstration or civil
12 disobedience, it's entirely possible that that would
13 produce audit trail logs that are for things that are
14 not at issue at this case or audit trail logs for --
15 I'm sorry, I'm having trouble sort of articulating
16 this so I apologize, but simply putting in a category
17 is not going to necessarily produce the audit trail
18 logs for the videos that were produced. In order to be
19 sure to produce the audit trail logs for the videos
20 that were in fact produced, they have to be done one
21 by one. It's possible that a wrong category was put in
22 and then you'd come up with a bodycam video audit
23 trail log of something that is not part of these cases
24 or, you know, if bodycam footage was taken, for
25 example, of --

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2 THE COURT: Okay, you're going into all this

3 because they proposed a way to get around doing it one

4 by one and you're saying that won't work, is that why

5 you're getting into this?

6 MS. WEISS: It's my understanding that that's

7 not going to be accurate and that they have to be done

8 one by one.

9 THE COURT: Hold on, let me just, I've got to

10 talk to Mr. Rickner, hold on. Mr. Rickner, you're

11 happy to just get the audit trail logs for the videos

12 they produced to you, I assume you're not, I'm not

13 sure what's going on here about searching audit trail

14 logs in general?

15 MR. RICKNER: Well --

16 THE COURT: Is that the one you asked for?

17 MR. RICKNER: Well, yeah, I mean the way to

18 get the audit trail logs that we're looking for is

19 through a search function. This is an ordinary ESI

20 issue, they have tags on these logs, they actually

21 have a specific locker in the Law Department. The Law

22 Department has an evidence.com access code with body

23 worn camera footage that they've produced in this case

24 that's actually tagged, you can see it in some of the

25 logs. The point is tell us what searches you're going

1 PROCEEDINGS 40

2 to run, we'll look at it, produce the bulk audit trail
3 logs to us after those searches have been performed
4 and give it to us. And don't let the perfect be the
5 enemy of the good. If there's one that's missing,
6 we're not going to run to Court, we're just going to
7 email Dara and say, okay, camera XYZ looks like it
8 wasn't captured in one of the searches but it's really
9 important, can we get it, and that solves the problem.

10 THE COURT: So you would do some search in
11 this time period for demonstration or something like
12 that, is that it?

13 MR. RICKNER: I mean I'd need to know which
14 tags that the Law Department had used, but, yeah, we'd
15 work it out. It's not impossible to get vastly all of
16 the information.

17 THE COURT: So, to you, that's better for you?
18 The way I was originally imagining this was you were
19 going to give them a list of 600 or something device
20 names and dates and you were going to have them, and
21 times, you know, you were going to identify recordings
22 and then they were going to find the log and then
23 print it out one by one and you're saying that's not
24 what you're seeking?

25 MR. RICKNER: That's not what we're seeking

1 PROCEEDINGS 41

2 and, in fact, to catalog all of that information would

3 be an immense burden on plaintiffs.

4 THE COURT: I see.

5 MR. RICKNER: Instead, we want them --

6 THE COURT: So no one, neither the plaintiff

7 nor the defendants want to have someone push a button a

8 thousand times, is that correct?

9 MR. RICKNER: Correct. Yes, absolutely.

10 THE COURT: Okay. Because I was having trouble

11 figuring all this out. Okay, so back to Ms. Weiss, no one

12 is having you push a button a thousand times which is what I

13 thought I was hearing you tell me.

14 MS. WEISS: That's why I'm just -- sorry.

15 THE COURT: So what they're asking for, and I'm

16 just looking at this first one, it has a category, you know,

17 demonstrations, civil disobedience, whatever, they're asking

18 you to do a search for that during the time period and just

19 produce those audit trail logs. That seems unburdensome,

20 what's the problem?

21 MS. WEISS: That is not burdensome but that is

22 likely to be inaccurate, because these videos can certainly

23 be mistagged or not have a tag, or other irrelevant videos

24 could be mistagged with a demonstration tag. The tag is

25 helpful overall, but it's not, it is certainly not going to

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THE COURT: So what? So what if it's inaccurate, what do you care, unless you'd rather figure out the thousand videos you produced and press a button a thousand times, if you want to do that, hire someone to do that in the next week, that's your alternative.

MS. WEISS: No, Your Honor, we certainly don't but we're loathe to provide inaccurate information because that, once again, puts us --

THE COURT: You're not providing inaccurate information, you're providing you think potentially irrelevant, but let's run it and then you'll figure out whether that's true or not.

MS. WEISS: I just don't think that that is a good way to go about this. I don't know what the best way is.

THE COURT: Why?

MS. WEISS: Because, Your Honor, I don't --

THE COURT: Why don't you tell me a better way?

MS. WEISS: To not provide the audit trail logs for the body worn camera that has been previously produced except for in the most recent batch of 600 or so we know which are the new ones, we can certainly

1 PROCEEDINGS 43
2 give that. But like I said earlier, we provided the
3 information including the names of the officers, when
4 the body cam produced was taken, so I don't think that
5 this information is necessary.

6 THE COURT: Okay, the relevance objection is
7 overruled, it sounds like we have a plan that's not
8 going to be burdensome at all. Let's see what running
9 the search produces. If, you know, if it's more or
10 less matching what was produced already then that's
11 going to be great, if it's vastly uninclusive or over
12 inclusive, there could be, you know, discussion about
13 that, it could be produced under a confidentiality
14 order certainly since there may be some irrelevant
15 material in there. So that's my ruling on that.

16 This seems like something that should be done
17 relatively quickly, to at least do a run of this,
18 because it's a very, a very closed system and very
19 limited search terms. So I'm going to require this to be
20 done in the next two weeks.

21 Anything else, Mr. Rickner?

22 MR. RICKNER: Yes, I'd like to know what searches
23 that they're running.

24 THE COURT: Yes, you need to work, Ms. Weiss, you
25 need to work with Mr. Rickner on the actual search terms,

1 PROCEEDINGS 44

2 you should talk about that as soon as possible. If you
3 haven't figured it out in the next few days you need to
4 write me, Mr. Rickner, you need to write a joint letter
5 giving the defendants' position so I can quickly rule on
6 search terms.

7 MR. RICKNER: Yes, Your Honor, and I would ask
8 that that meet and confer be attended by the people
9 from the NYPD who came last time who were very
10 familiar with the technology and knew exactly how it
11 worked, which is how we made progress initially.

12 THE COURT: Certainly makes sense that only
13 people who know exactly how this works should be involved
14 in discussing how to deal with it. Yes, so ordered.

15 MR. RICKNER: Thank you, Your Honor.

16 THE COURT: Ms. Weiss, anything else?

17 MS. WEISS: No, Your Honor.

18 THE COURT: Okay, that's 379.

19 MR. RICKNER: Well would you like to discuss
20 the sanctions issue that was also part of 379?

21 THE COURT: Oh, gosh, I'm sorry, I'm, I
22 apologize, you're absolutely right. Okay --

23 MR. RICKNER: Well I will --

24 THE COURT: Hold on, hold on. Go ahead.

25 MR. RICKNER: I would say I'll try to make

1
2 this brief.

3 THE COURT: No, no, give me a second to, give
4 me a second, I just need to re-read my order and so
5 forth, hold on.

6 MR. RICKNER: Yes, Your Honor.

7 THE COURT: Okay, go ahead.

8 MR. RICKNER: Thank you, Your Honor. So going
9 to the sanctions issue, it seems, it seems that one of
10 the major thrusts of Ms. Weiss' arguments is that she
11 doesn't have time, and I think it's worth noting that
12 this particular issues, the body worn camera issue
13 and, in fact, the meet and confer where we got into
14 the technical specifications was being handled by
15 attorney Alyssa Jacobs. And she actually made good
16 progress. In fact, in the September 28th email that I
17 mentioned before, she says we are in the process of
18 obtaining those four audit trails that should allow us
19 to continue our discussions, and she said I have one
20 that I expect in the next, quote, "In the next few
21 days." Now this is months ago now.

22 This was good progress. The problem is, is
23 that Ms. Jacobs was reassigned to other cases. There
24 is, she moved to withdraw. And actually if you go to
25 the motion, this was October 22nd and it's docket

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2 number 296, in that motion Ms. Jacobs and another
3 attorney for the Law Department who was also very
4 senior and working on this case said don't worry, this
5 case won't be understaffed if we leave. I'm
6 paraphrasing but that was the thrust of the statement.
7 And that wasn't true.

8 And so I understand that this may be, you
9 know, dealing with all of this information may be
10 personally unpleasant for Ms. Weiss, but this is a
11 specific set of decisions by the Law Department and
12 the NYPD as to where to place the resources and what
13 resources to obtain. If you put it all on one lawyer
14 maybe, yes, that lawyer gets overloaded, but that
15 doesn't mean that the plaintiffs are wrong for asking
16 for all this material, it means you need more staff.
17 And so I think, you know, the primary explanation for
18 why this wasn't done really falls apart when you look
19 at this as a larger issue and go, yes, they need to
20 put more lawyers who know what's going on and
21 certainly shouldn't be taking lawyers off this case.

22 Now, again, you know, as far as, you know,
23 priority, and I think I made this point earlier, in
24 fact, Your Honor did, which is Court orders go to the
25 top of the pile, they're not the equivalent of, you

1 know, the emails, and (indiscernible) as part of
2 discovery. And so this particular order should have
3 gone to the top of the pile. And we know it wasn't
4 ultimately that hard to comply with because after I
5 filed the motion we got the documents the next
6 morning. The problem is, is that whatever it took
7 between the City and the NYPD to make that happen
8 didn't occur when it should have. So really, again, I
9 don't think the idea that this was somehow burdensome
10 and that's why it didn't work out, holds any water.

12 And, further, this is really a, this whole
13 dispute is a microcosm of what we've been facing in
14 every discovery dispute. We cannot rely on the City
15 to take clear positions, we end up not finding out
16 what their true position is until motion practice or,
17 in this case, apparently Ms. Weiss forgot about the
18 earlier position they had taken on burden and then,
19 you know, changed their mind again in motion practice.
20 We just can't make progress if that keeps happening.

21 They promised to give us documents of
22 information. We have, they never really objected to
23 the sample logs and we have email after email where
24 either Ms. Jacobs or Ms. Weiss is saying, oh, don't
25 worry, we're going to get them to you shortly, we're

1 looking into it and it just never happened. So we
2 can't rely on them when they say they're going to do
3 something in the meet and confer, that they're
4 actually going to do it. And compounding this and
5 also this appeared with the body worn camera footage
6 issue generally, we spent two months almost I think
7 scheduling the meet and confers, not regarding the
8 Court order but following the Court ordered meet and
9 confer where we needed to do all the follow-up and
10 build on the progress we had made, they just won't
11 schedule them. This was part of another motion that
12 Mx. Green put in and that I think detailed it fairly
13 well.
14

15 And then when we finally get fed up and we
16 file motions, sometimes more than one, Aviation took
17 two motions, body worn camera took two motions, these
18 are key documents where we're applying to the Court
19 multiple times, they don't follow the orders. Or they
20 don't take any action until, in candor, it looks like
21 they're obviously going to lose a motion and they
22 decide, gosh, you know, quick, I may just well try to
23 fix this. We have experienced this at every level
24 really, you know, every single one of those complaints
25 that I've made could be applied entirely or at least

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2 in large part to all of the discovery requests. And
3 that is why, you know, we're facing this, you know,
4 very strict schedule and, you know, the plaintiffs are
5 panicking, because we aren't getting information we
6 need in the time to use it in depositions, in time to
7 analyze it and understand how it fits with the larger
8 case, and it's really created a lot of burden.

9 I mean, so, yes, we've been filing a lot of
10 letters and making a lot of requests, but we don't see
11 a choice. They have forced this, they have forced us
12 into this through the multiple deficiencies in the
13 actions that I've outlined. So I think a sanction
14 needs, and, you know, we can maybe talk about this as
15 a larger issue, but there needs to be a sanction that
16 is sufficient to get them to knock it off.

17 THE COURT: Ms. Weiss?

18 MS. WEISS: Your Honor, respectfully, as I'm
19 sure the Court knows and plaintiffs' counsel, I am not
20 the only attorney on this case. These cases are fully
21 staffed by a full team of attorneys and paralegals
22 plus a lot of non-team attorneys who are doing
23 specific tasks. Part of the problem is that earlier on
24 Your Honor told the plaintiffs that when they have
25 issues they should have one attorney dealing with the

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2 issue write to us or contact us with all of the issues
3 once a week or once every two weeks or whatever the
4 time period may be. That's not happening. We're
5 getting dozens and dozens of emails and letters and
6 requests for meet and confer all by different
7 attorneys on different individual cases. These are
8 supposed to consolidated for discovery but plaintiffs'
9 counsel are supposed to act as one with respect to
10 discovery. It's not happening and although we're
11 certainly not missing out on things or we're ignoring
12 things, we're not ignoring things at all. Any missed
13 deadlines are simply inadvertent, but we're really
14 trying to scramble to keep up with plaintiffs'
15 onslaught.

16 And, you know, this goes into Mx. Green's
17 letter as well, we want to get these documents and
18 this information to plaintiff, plaintiffs. They're
19 making it very, very difficult because we're spending
20 an inordinate amount of time responding to them rather
21 than having the time we need to actually get these
22 documents, review them, get them out to plaintiffs
23 while still trying to defend our clients. It's, it's
24 constant and it's impossible to keep up with because
25 the plaintiffs are, instead of acting like a

consolidated group of cases and a number of these cases actually asked to be consolidated into these actions, they're still, they're still litigating these cases in large part like they're individuals cases. And it's, it's unfair to defendants to try to ask us to keep up.

And then when we try to concentrate on one issue, if another issue falls by the wayside we then have those counsel coming up to us and insisting. We can't do everything at once, things have to happen in an order, and the last few weeks have really, really been, really since the start of the year but the last two weeks especially, it's just been constant and not possible for us despite our full and fairly large team of attorneys working on this.

So, you know, we certainly apologize, we certainly in no way meant to ignore any kind of order but it happened and it was missed, and we would love to find some sort of way to, to I guess, I understand plaintiffs have their issues and we're happy to hear them, but some sort of orderly way to do it so we have everything in front of us at once instead of piecemeal so we can deal with it that way.

(interposing)

THE COURT: Sorry? Mr. Rickner?

MR. RICKNER: I'm sorry, Your Honor --

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2 THE COURT: Go ahead, Mr. Rickner. Actually,
3 Ms. Weiss, you were done, right?

4 MR. RICKNER: I'd just like to correct --

5 THE COURT: Hold on, Ms. Weiss, you were done,
6 right?

7 MS. WEISS: Well I just wanted to conclude by
8 saying, you know, based upon the good faith the
9 defendants are trying to engage in, I don't think that
10 sanctions are appropriate.

11 MR. RICKNER: I'd like to correct the record, Your
12 Honor, on one specific issue. We have not been
13 spreading different discovery issues across different
14 teams. The body worn camera audit trail logs are a
15 perfect example. This has been, for better or worse,
16 my problem from the beginning, I'm on the Sierra team,
17 I have one protest, not all 83, but I've been -- but I
18 didn't limit my demands to that protest. I worked with
19 everyone, I've been on all the meet and confers on the
20 issue which, mind you, the City, in fact, has shifted
21 around who's on the meet and confers, but I've handled
22 this, you know, pretty much from start to finish, I've
23 always been the point person on communicating about
24 this with the attorneys assigned and that's the way we
25 do it every time.

So somebody has Aviation, actually that was me, as well, so that's a bad example. Somebody has the audit trail logs. Somebody has disciplinary records. And it's really always been the same attorney on one of the consolidated teams who's followed up. So the accusation that we're somehow picking an issue and coming at it with five different people throwing emails at Ms. Weiss or the rest of defense counsel, that's not true. That's not what we've been doing.

And I'd also like to note, it has taken a remarkable amount of coordination on the plaintiffs' side, we aren't always in agreement, to always present a unified front with one person handling each issue. Almost always. I mean I can't say we've always been perfect but 95 percent of the time, we've worked together internally and then put one person up to handle it.

THE COURT: All right, let me do what's simple. What's simple is I issued a very clear order requiring documents to be produced and the City failed to comply with it. The excuse I have heard is certainly not sufficient for that. It does not show, it does not show substantial justification or any other circumstances that make an award of expenses

1 unjust. So with respect to the failure to comply with
2 the order, Mr. Rickner, your, I'm awarding as a
3 sanction your attorney's fees for having to write me
4 the letter, I guess your letter of February 8th, and
5 any other related time for that. So if you can make a
6 presentation by letter to me at some point to get
7 those fees and so we can specify the amount of those
8 fees.
9

10 MR. RICKNER: Yes, Your Honor.

11 THE COURT: With respect to the substantive --
12 okay, with respect to, and by the way, I suggest you
13 show it to the other side and maybe they'll agree on
14 the amount and then I won't have to be involved. With
15 respect to the overall issue of the production of the
16 body worn camera audit logs, I'm not happy certainly
17 with the City's conduct during that, I'm on the fence
18 about it, I'm going to reserve sanctions on that, I'm
19 going to see how things go otherwise and I reserve the
20 right to issue sanctions with respect to that course
21 of conduct but at this point I'm not going to be doing
22 that today so that's being reserved to another date.

23 Let me just address what Ms. Weiss said, it's
24 probably going to come up with Mx. Green, the notion
25 that it's unfair to ask you to keep up with discovery

issues is completely unacceptable. If the case is not sufficiently staffed, it needs to be sufficiently staffed. Ms. Pestana is an extremely competent administrator and attorney and if the demands are large enough that more staff is needed she will understand that, you need to present that to her. You need to suggest to her that I've raised this issue with you. It's not acceptable for you to say that, and I'm now quoting you, "It's unfair to defendants to ask us to keep up with the discovery demands here." The, if you had come to me and said that there were, you were getting different signals from the plaintiffs, that you had two different attorneys asking for the same thing and doing it in different ways, I want to hear about that immediately, that that is unfair. But if there are 10 discovery issues or 15 discovery issues and they're being presented by 4 or 5 lawyers, that's not, that's not a grave problem it seems to me. You're certainly welcome to have a single conference with each, they're all required to speak when you want to meet and confer, if that scheduling makes it easier for you, but there's no point in, as long as they're keeping to the notion that the discovery requests or discovery disputes, each one is being handled by a single

1 attorney, that's nothing to complain about, they don't
2 all have to be handled by one attorney.

3
4 And as I said, you know, if there's a problem,
5 the solution is not to ignore Court orders and refuse
6 to meet and confer, I mean there is a whole litany of
7 that here. The solution, if it's a problem, is to come
8 to me and say here's how to make this more efficient,
9 we need to have it done some particular way, you know,
10 these two attorneys are across purposes and we can't
11 keep up with that.

12 It doesn't surprise me that in a case like
13 this, I think you said there were nine attorneys on
14 it, one person may just be responsible for dealing
15 with the discovery disputes and that might involve a
16 lot of meeting and conferring during the week, so that
17 shouldn't be a big surprise. And part of the reason,
18 from what I can tell from the letters, that we need so
19 much meeting and conferring is that the City is not
20 giving definitive positions on things.

21 You know, I'm ready to decide disputes about
22 what is burdensome and what is not burdensome but the
23 City has to get to the point where it can articulate
24 exactly what the burden is which almost never happens.
25 Even when it comes to me there is just this sort of

generic statement about this is burdensome without saying, you know, what's involved, without saying how many hours are involved, how much personnel is involved. At the bare minimum the City has to figure out, if it's going to be making these objections, what actually is the burdensomeness objection, I'm almost never getting that. So from the record presented to me, and the record from the City is extremely thin, I get very detailed letters from the plaintiffs describing at length, you know, refusals by the City to meet and confer, cutting off a session after an hour and a half that involves a lot of issues, the City never denies any of this, never responds, never explains. And if the only explanation is going to be, well, we can't keep up, that's just not an acceptable explanation. What's going on here is just of the character of what might be expected in a case like this.

Okay, so that's my ruling as to 379. I think what we have left is 369, the prior (indiscernible) so I'll turn it over to Mx. Green.

MX. GREEN: Thank you, Judge. I think there are a couple of things in the letter, I'm happy to try to address them all at once or if you'd rather, as we

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2 did before, we can start with the merits of --

3 THE COURT: Yes, I was a little unprecipitous
4 and I apologize because I had forgotten that I had
5 promised you a reply date on the issue of the 2002 and
6 prior documents. So I apologize, I read your letter, I
7 thought of it as a reply, so I'm ready to deal with
8 the merits of that.

9 MX. GREEN: Okay.

10 THE COURT: I should have asked what you meant
11 by the merits.

12 MX. GREEN: Exactly, Judge.

13 THE COURT: Okay, so why don't we discuss
14 that, then I'll hear from Ms. Weiss, and then I'll
15 make a ruling on that.

16 MX. GREEN: Okay, I think one of the just
17 core, call it, themes of this case is that this is
18 what the NYPD has done forever, they have engaged in
19 the same practices, sometimes they give them new
20 names, sometimes they rename the units that are doing
21 it, but at the core they have over more than 20 years
22 engaged in a policy of brutalizing protestors, of
23 intentionally intending to "disburse and demoralize,"
24 those are quotes from a Power Point presentation
25 during the Work Economic Forum, protestors, rather

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2 than facilitating First Amendment expression.

3 I think that, while it's certainly important
4 and I don't think that, you know, we would conceded we
5 can't make our case without World Economic Forum and
6 that era of protests, I think that that is the most, I
7 mean more than Republican National Convention, I think
8 that that's probably the most important origin point
9 for a lot of the policies that we intend to track
10 through time. I'm not going to say on the record or on
11 a public call what has been designated confidential,
12 but the, the quote that was redacted in my letter I
13 think speaks directly to that.

14 Beyond that, you know, separating the
15 Republican National Convention from the World Economic
16 Forum is somewhat artificial given that, you know,
17 the, all of these sets of litigations dragged out for
18 a decade each. And so the documents all overlap, I
19 mean the question is just when, when is the start date
20 for collection. And as far as, I think it seems to me
21 that it's obvious that it's relevant, it's important,
22 being able to say that, that it has happened across
23 three major eras of protests is, you know, much better
24 at trial than being able to say it happened over two
25 major eras of protest, right? Whether it's literature

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2 or art or comedy, we all talk about a rule of three
3 sometimes.

4 I think, the question is what's the burden,
5 and as you just said, we haven't heard even a word
6 about the burden. And I think this is, that's
7 particularly significant because at the very first
8 discovery conference, Ms. Weiss, in complaining about
9 the scope of our request, specifically identified the
10 World Economic Forum as something that they were
11 looking at doing, right, they were looking at getting
12 those documents and said, and said to the Court that
13 she didn't know then what the burden of doing it was.
14 And despite, you know, a specific direction from the
15 Court to respond to all the arguments in our letter,
16 we still have no idea what the burden of doing it is.

17 I think that relevance is not really at issue,
18 the question is maybe proportionality and burden and
19 at this point I don't see how the City hasn't waived
20 it. We had to make motions about compliance with the
21 2015 amendments earlier in the case where the Court
22 specifically, I think, identified burdensomeness as
23 something they'd have to object to with specificity and
24 tell us if they were refusing to make certain searches.
25 The Court also ordered algorithm letters during which they

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2 did not say a word, not one word about what they weren't
3 collecting from the World Economic Forum. And, you know, I
4 do not see how in good faith they can assert that these
5 objections are preserved, let alone meritorious. So that's
6 the merits.

7 THE COURT: Okay, so just turning to the 2002
8 and earlier, Ms. Weiss?

9 MS. WEISS: Yes, Your Honor. So I think that,
10 so the defendants had objected initially back to times of
11 even the Republican National Convention in 2004 as being not
12 proportional. Plaintiffs then, after Judge McMahon issued
13 her order on the City's motion to dismiss, she specifically
14 mentioned the relevance, I suppose, of the Republican
15 National Convention to the claims or mentioned the
16 Republican National Convention.

17 So the defendants withdrew that part of their
18 objection and offered to produce materials with, certain
19 materials with respect to the Republican National
20 Convention. But, and plaintiffs used Judge McMahon's order
21 trying to convince us to provide materials from as far back
22 as the Republican National Convention, that's the date that
23 they used at that time. It's really hard to fathom how
24 events that happened 20 years ago are relevant to events
25 that happened so much more recently.

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2 There is, the police department is a completely
3 different place now. There, there have been many changes
4 between the time of the Republican National Convention and
5 today. It's, I don't see how policies that went back that
6 far could possibly have relevance today. In addition, as we
7 have learned recently as we're collecting materials from the
8 Republican National Convention and other demonstrations and
9 protests and related lawsuits, burden is incredible. We're
10 having difficulty obtaining documents from the Republican
11 National Convention because it was so long ago, they exist
12 but they're not all electronic. Papers are likely archived.
13 Part of the, part of the discussions in producing those
14 documents was that we in our office at the Law
15 Department were going to try to go through our files
16 and see what we still had from those litigations
17 because it's likely that we would have gotten anything
18 from New York City Police Department that the
19 plaintiffs are looking for here.

20 It turns out that the database that we had
21 them on is no longer in existence. Paper documents
22 would be archived and not easy to access. Documents
23 from the World Economic Forum were even older. They're
24 not electronic formats at the New York City Police
25 Department. There were a couple of them but they would

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2 generally be paper documents. Anything in our office
3 from those lawsuits which I expect would have the
4 types of documents that plaintiffs are looking for are
5 not even, they're so old that they're not even on our
6 most basic sort of electronic file system that we use
7 every day. I was involved in a couple of those cases
8 and if I try to bring them up on our internal system
9 they're not even there.

10 So I think, besides the fact that those events
11 were so distant in time to the ones at issue here, and
12 the burden of trying to track down these papers
13 documents from archive and find the relevant
14 documents, it's really, you know, it outweighs the
15 relevance. Plaintiffs are going to have documents from
16 2004 and actually even a little bit before 2004, which
17 include some of the planning type documents for the
18 Republican National Convention, it just seems like an
19 added burden to what's already burdensome to try to
20 get documents that are even older.

21 MX. GREEN: Your Honor --

22 THE COURT: No, no, no, no, hold on.

23 MX. GREEN: Okay.

24 THE COURT: So explain the paper archive
25 process, Ms. Weiss, how does that work, how do you

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find out about documents, what does it take to get them, what's the issue?

MS. WEISS: So from, I know how it works in my office. The cases are closed, they're boxed up hopefully with the name of the case on the box, and they are brought to an offsite warehouse. I know from the WEF cases there's got to be at least 100 boxes. There is unlikely going to be any sort of index of what's in each box and I also don't know what, you know, the extent that all documents were properly filed and saved, I'd like to assume that they're all there but I know generally when we request boxes out of archive it takes some time to come. I haven't done it since, since the pandemic started so I don't exactly know what the timeframe is on that. But then it would take significant or support staff hours to go through those boxes and try to find the relevant documents. I don't know exactly how it works from the police department's standpoint, unfortunately, but I do know --

THE COURT: That's going to be the more targeted documents, I mean, if they have, you know, plans, operational plans, whatever it is.

MS. WEISS: I do, I do know from other cases

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2 that police department archives are a similar system,
3 they're boxed up and sent to either offsite archives
4 or sometimes I know, for example, I had a case where
5 documents were placed in a basement of a precinct and
6 it just so happened that there was a flood and they
7 were destroyed. I think actually during Hurricane
8 Sandy but I'm not saying that that's happening here. I
9 don't know where these boxes are archived, but when
10 they're not saved electronically, it's just many, many
11 hours --

12 THE COURT: Well, Ms. Weiss, this is very
13 disturbing because this issue's been on the radar for
14 months. It seems like you should know what the burden
15 is exactly for what they're asking, what you could and
16 what you could not do, why don't we have the answers
17 to those questions?

18 MS. WEISS: Well, Your Honor, because we have
19 been concentrating on the documents from the
20 Republican National Convention which --

21 THE COURT: Well as to those, let me ask as to
22 those, as to those documents, what's the, are you
23 giving up on the NYPD, are you just producing from the
24 Law Department, what's going on with those?

25 MS. WEISS: No, Your Honor, not at all, but

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2 they, the documents have been requested. Hopefully
3 they're somewhere on, at least some of them are on,
4 have been saved electronically. We've provided
5 previous --

6 THE COURT: At the NYPD?

7 MS. WEISS: Yes. We've already provided
8 certain documents --

9 THE COURT: Is there more to be found at the
10 NYPD?

11 MS. WEISS: There's things like after action
12 reports, there's a few specific documents that I know
13 Mx. Green has spoken about that we were hoping would
14 be exhibits to certain depositions which we did
15 produce. We produced the depositions, unfortunately
16 the exhibits were not contained along with them.
17 They're in the Law Department database that no longer
18 exists that had been made specifically for the RNC
19 cases. But we --

20 THE COURT: Are they in an identified box?

21 MS. WEISS: I, I do not believe so.

22 THE COURT: Who, who's responsible for looking
23 for all this?

24 MS. WEISS: It would be myself and my team for
25 the Law Department, and then we have liaisons at NYPD who

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2 search for documents or assign searches for documents.

3 THE COURT: I, the vagueness here is
4 incredible to me. I mean you need to, I mean are the
5 exhibits, for example, for the depositions in an
6 identified box that's in an archive that can be
7 ordered or not --

8 MS. WEISS: I --

9 THE COURT: Or don't you know the answer, if
10 you don't know the answer it's very important that you
11 tell me you don't know rather than guess?

12 MS. WEISS: Oh, I'm not guessing, Your Honor,
13 I don't know, but I can speak to the attorney who was
14 in charge of those cases who is still with the Law
15 Department. He's the one who was able to point me to
16 the deposition transcripts which were requested and
17 produced.

18 THE COURT: Well why hasn't that happened?
19 (indiscernible) know the answer to that right now --

20 MS. WEISS: I'm don't, I'm sorry.
21 Respectfully, Your Honor, I did not know that I was
22 going to be asked how exhibits are archived, I
23 apologize.

24 THE COURT: Well it's raised in your letter.
25 All right, Mx. Green, did I interrupt you?

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2 MX. GREEN: Your Honor, the only thing I was
3 really aiming to add, well, two things. First, I
4 think where Ms. Weiss ended before you two started
5 talking, I think it's very important to note we still
6 don't have documents, and we still don't have an
7 explanation or an affidavit like you ordered, and I
8 think that's partly what's driving the problem.
9 Although the other thing that I would add is my
10 understanding of whenever, you know, the City doesn't
11 get to just archive or destroy things, they actually
12 have to ask permission from the Corporation Counsel.
13 And there are, I think there are affidavits that are
14 created whenever anything goes to an archive. And, you
15 know, certainly we're not going to ask them to try to
16 reconstruct documents that were destroyed in a flood
17 or a hurricane, but I, you know, it is just as
18 incredible to me that we don't know the basic answers.

19 You know, I'll segue to sanctions, we'll segue
20 to sanctions at some point but I think at some point,
21 you know, the fact that we don't have answers, it
22 might be a deterrent sanction to make them, you know,
23 collect this no matter the burden.

24 THE COURT: I, there's an utter lack of
25 information here about burden and I, I mean I, I'm

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2 ready to, I guess maybe one thing to do would be to
3 get the NYPD people to meet with you, Mx. Green, like
4 Monday and so you can talk to them about where these
5 documents might be, would that help and we can get
6 back on the phone, I could try to find a time next
7 week for us to continue this?

8 MX. GREEN: I mean I suppose --

9 THE COURT: I don't want, I don't want them to
10 do, I mean I'm not prepared to say they've waived the
11 burdensomeness objection because I mean I do have a
12 goal in trying to move this along. And on the prior
13 protests, you know, we're not going to, I don't want a
14 litigation, I don't want, you know, to require them to
15 produce on the RNC or Occupy Wall Street, you know,
16 the set of documents that would have been or were
17 produced as part of, you know, a case that was brought
18 about those two things. This is a much more limited
19 production having to do with their, you know,
20 operations, conduct, something, I mean it's just
21 something much more limited and I think there has to
22 be a way to figure out how to do this without
23 burdensomeness.

24 MX. GREEN: I agree, Your Honor --

25 THE COURT: Let me just tell you on 2002, it's

1 a long time ago, I don't, you know, the relevance
2 becomes, I disagree on your, your view, Mx. Green,
3 that it's necessarily relevant. Certainly, I have no
4 problem you're asking about anything you want in
5 deposition, the question is how much burden I'm going
6 to put on the City to produce documents from it. I,
7 when I made my ruling I was persuaded, perhaps I
8 shouldn't have been, that there was going to be a
9 burden, a significant burden in producing 2002
10 documents, I just don't know that we've gotten to the
11 bottom, the bottom of this and I'm trying to figure
12 out a good way to do it, do you have any thoughts, Mx.
13 Green?
14

15 MX. GREEN: Well, you know, I suppose a
16 meeting would be useful. I'm not sure if the people
17 we've been talking to at NYPD know this stuff, if
18 there's an archivist maybe that's the right person to
19 talk to. You know, knowing only what I do about the
20 NYPD through litigation, I don't know who the relevant
21 --

22 THE COURT: Ms. Weiss, who are you talking,
23 who's responsible for this at the NYPD, who is
24 responsible for looking for this?

25 MS. WEISS: My liaison is the managing counsel

1 of the Civil Litigation Unit and her, one of her main
2 roles is knowing where to find documents and give it
3 to the Law Department for litigation. We also have an
4 attorney liaison from the Police Action Litigation,
5 I'm not sure of what the acronym is but he's an
6 experienced litigation attorney at the police
7 department and he also plays a role in helping us
8 obtain necessary documents. So between the two of
9 them, I have no doubt that they will know who to speak
10 to, to find out more information about these
11 documents.
12

13 MX. GREEN: Your Honor, if I may, they'll know
14 who to speak to, not they're the people to speak to.
15 And I do think this plugs into something I want to
16 talk about a little later which is, you know, the meet
17 and confers on the first consolidated requests where
18 the Court ordered defendants to be ready to find confirmed
19 dates on a list of documents that we sent them in
20 September last year. And the best we were able to do
21 talking to this liaison was getting dates, getting
22 commitments to give us dates to give us dates 20 days
23 from Wednesday. So, you know, clearly that person
24 doesn't know where documents are with firsthand
25 knowledge, she knows who to talk to, and that's

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2 clearly not enough.

3 THE COURT: And I mean the nature of the
4 documents we're talking about, I mean that's also a
5 little bit unclear to me and maybe this is partly an
6 issue for you, Mx. Green, which is what is it that you
7 are looking for? Because, as I said, you can't do a
8 re-litigation of RNC or anything else.

9 MX. GREEN: Of course. I think our discovery
10 requests spell it out in some detail, but it's stuff
11 like after action reports, UF-49s, some arrest
12 reports, action plans, after action reviews. I think
13 we may have asked for some disciplinary material,
14 although my understanding is that that's going to be a
15 very thin stack of paper if it exists at all. It's
16 that kind of stuff, it's spelled out in more detail in
17 the requests but it is targeted in that we named by
18 name the kind of documents we want.

19 THE COURT: So you don't think there is any
20 utility in having someone from (indiscernible) talking
21 to anyone at NYPD, and I can have them bring the
22 people who are responsible for --

23 MX. GREEN: If it's the right person --

24 THE COURT: (continuing) -- that has some
25 knowledge of where the documents are.

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2 MX. GREEN: If it's the right person I think
3 it would be hugely useful, the problem is that we've
4 never been in the room with the right person except on
5 the, on the body worn camera issue. The people that
6 have been coming to our meet and confers need to go
7 talk to other people and don't have any personal
8 knowledge of what searches have been done. And, in
9 fact, you know, they'll put a footnote on that because
10 the general answer is that they haven't started
11 searches at all.

12 MS. WEISS: Respectfully, I disagree with a
13 lot of what Mx. Green --

14 THE COURT: Have they started searches, Ms.
15 Weiss?

16 MS. WEISS: Yes. Yes, Your Honor.

17 THE COURT: Okay, who, is it this managing
18 attorney who personally looks or they delegate
19 someone?

20 MS. WEISS: No, she does not personally look,
21 there is, there's dozens and dozens and dozens of
22 different places where, where documents can be. And
23 she does not personally look. She either reaches out
24 to the different places where documents could be to
25 have searches done or she has, if it's something

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2 simple she delegates to one of her staff. But she does
3 not personally do searches. Different searches,
4 different types of searches for different types of
5 material are done in different places by different
6 people. It's just not practical to have all these
7 different people on meet and confer which is why all
8 the information is consolidated through this managing
9 attorney.

10 THE COURT: Well we have limited categories of
11 documents so I'm ordering that the people who know
12 where those documents are appear in a conference call
13 with or without the managing attorney and do it by
14 Monday or Tuesday so that we can finally figure this
15 out and I can understand what the burdensomeness issue
16 is. I'm leaving 2000 -- I'm leaving the World
17 Economic Forum in the mix for right now, I'm not going
18 to make a final ruling on it without hearing what it
19 would take for you to get documents from them, but we
20 need a meeting with the actual people who know where
21 this stuff is, I don't believe it's dozens and dozens.
22 I believe that given the listing that Mx. Green has
23 described, that's going to be circumscribed.

24 MX. GREEN: Your Honor, can we order -- I'm
25 sorry, I did not mean to interrupt.

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2 THE COURT: Go ahead.

3 MX. GREEN: Can we order a meet and confer
4 time just because of the difficultly we've been having
5 in getting these scheduled --

6 THE COURT: Sure. Let's say Tuesday.

7 MX. GREEN: Can we do Monday at one o'clock?

8 THE COURT: Well I want them to be able to get
9 people to work on this.

10 MX. GREEN: Understood.

11 THE COURT: I'd rather do Tuesday or
12 Wednesday.

13 MX. GREEN: Okay, then for me a Wednesday
14 afternoon would be ideal.

15 THE COURT: Okay, Wednesday, 2 p.m.

16 MS. WEISS: Your Honor, respectfully, if the
17 person who is in charge of this is not available
18 Wednesday at two, I don't want to be in violation of
19 the Court --

20 THE COURT: Then you'll write me a letter
21 telling me what the problem is after talking to Mx.
22 Green first.

23 MS. WEISS: Yes, Your Honor.

24 THE COURT: And, by the way, that's advice for
25 the future, if I order something and you feel you

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2 can't do it, you can't just blow it off, you have to
3 do something about it, do you understand that, Ms.
4 Weiss?

5 MS. WEISS: Yes, Your Honor.

6 THE COURT: Okay, so my problem is I'm a
7 little booked up in the following days but I, probably
8 Friday afternoon I have time for us to reprise this
9 next Friday. Okay, why don't we reserve the p.m. on
10 the 18th in case, 2:30 p.m. on the 18th in case we need
11 it. I'm not putting this down as a conference yet but
12 we'll see what, see what report I get.

13 MX. GREEN: Understood.

14 THE COURT: If you come to an agreement on
15 this it would be great. And, you know, Ms. Weiss, you
16 have responsibility in the meantime, it's not just
17 NYPD, you've got to get your ducks in a row completely
18 about what the Law Department can get its hands on,
19 what it would take to get something from archives --

20 MS. WEISS: Yes, Your Honor.

21 THE COURT: You know, whether, how they're
22 identified and what the big deal is, you can't just
23 have guesses about based upon some experience you once
24 had in the past.

25 MS. WEISS: Understood.

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2 THE COURT: All right, we have some other
3 pieces of this, Mx. Green, do we have any other pieces
4 on this, I feel like there was some other order that
5 was violated --

6 MX. GREEN: Yes, Your Honor. So I mean we
7 haven't talked about the sanctions issue on this issue
8 and --

9 THE COURT: Okay, so let's finish out the
10 merits, maybe we have finished out the merits, before
11 we get to sanctions, and we're putting off the merits,
12 I guess.

13 MX. GREEN: Yeah, the only thing I will add on
14 the merits is I'm not entirely sure we have a full set
15 of depositions so I'd like that to be, you know, we,
16 Ms. Weiss and I can meet about that, but I, I do not
17 think that they were, that we've gotten is
18 particularly comprehensive. I think it's, anyway, I
19 will address that separately if that's okay with
20 everybody.

21 THE COURT: Okay. So we're on sanctions then?

22 MX. GREEN: I believe so. So I think, if I
23 may, I'd like to start with, you know, a particular
24 set of sentences in the letter opposing it where
25 defendants wrote in ECF --

1 PROCEEDINGS 78

2 THE COURT: Before you get to the opposition, just
3 since I have a bunch of issues here, just remind me
4 specifically --

5 MX. GREEN: Understood.

6 THE COURT: Is this the one where I required an
7 affidavit?

8 MX. GREEN: It is.

9 THE COURT: Okay.

10 MX. GREEN: An affidavit or production and we
11 still are, have no affidavit as of today and the production
12 is still incomplete as of today.

13 THE COURT: Okay, just give me the docket number
14 of my order.

15 MX. GREEN: Absolutely, give me one second unless
16 somebody has it and can pass it to me. I believe this is
17 383.

18 THE COURT: Hold on. No, I think the order is
19 359.

20 MX. GREEN: Oh, I'm sorry, I thought you meant
21 the, yes, that, yes, correct.

22 THE COURT: 359, okay, so let me just look at it.
23 I need to pull it up here. Okay, go ahead.

24 MX. GREEN: Okay, so I think given where the Court
25 wanted to start, where I'd like to start then is just

1
2 briefly with the history of what's happened here. These are
3 documents that I think, you know, our view is that we
4 should have gotten them on July 31st. They are clearly
5 part of the first set of consolidated requests,
6 although defendants did object ultimately I think the
7 Court ultimately rejected the argument on which they
8 were objecting in a decision that it issued on the
9 motion to dismiss before July 31st.

10 The way we've gotten to where we are now is we
11 then sent an email, defendants asked for a couple of
12 weeks to think about it, they thought about it and
13 that just kept getting kicked down the road with
14 progressive commitments to get us documents and
15 revised objections, you know, every few weeks. And
16 so, you know, theoretically, at least, I would have
17 hoped that somebody was looking for the documents in
18 that time.

19 Ultimately, skipping forward a bunch,
20 defendants made a firm commitment, and if I'm remembering
21 this issue correctly, this is one where they even said, yes,
22 there will be consequences, we agree you'll be able to call
23 witnesses back if we don't make a deadline of December 17th.
24 What happened, and this connects some of the staffing stuff
25 we were talking about earlier, is that Ms. Weiss had planned

1 a vacation and, of course, attorneys should be allowed to go
2 on vacation, there is nothing wrong with that, that lasted
3 for about two and a half weeks starting on December 20th.

4 And so this was not the only commitment that defendant sets
5 for December 17th and 18th, there were five or six big issues
6 that they promised productions on and they didn't produce
7 anything.

8
9 And so what happened is we then started trying to
10 follow up and the answer we got from the rest of defendants'
11 litigation team was that they were not able to respond to
12 anything while Ms. Weiss was out of the office and that
13 every decision needs to be signed off on by Ms. Weiss. And,
14 you know, I think for this issue, in particular, that was
15 striking because at every meet and confer we had, Ms. Weiss
16 told me that this was not her issue, that she was not
17 dealing with it, that somebody else on her team was dealing
18 with it and would be getting the answers soon and until the
19 commitment of December 17th.

20 Ultimately then, you know, we held off on making a
21 motion although we sent them a motion I think on December
22 20th or 21st under ECF 317 that said, you know, we want to
23 compel these documents, it's, you know, dis-serving that
24 you're blowing our, you know, the things you've committed in
25 writing to us to do. Ultimately, we decided to hold off and

1 let Ms. Weiss have an opportunity to address it when she
2 got back to the office and what we got was nothing when
3 she got back to the office, she just didn't respond to the
4 emails. And so we filed the letter and the first time
5 around defendants filed an opposition that the Court said
6 did not actually do any of the things it was supposed to do.
7 And so they filed another opposition and, you know, what it
8 seems like from what they've said about at this stage their
9 failure to produce is that they started collecting these
10 documents for the first time after the Court ordered
11 them, not even after the Court ordered them to, to
12 file a second opposition letter but they didn't start
13 collecting them until the Court literally ordered them
14 to collect the documents. And so, you know, on
15 sanctions Ms. Weiss' letter focuses on how it wasn't
16 unreasonable for them to miss a deadline when the
17 Court ordered it on January 24th for January 28th. And
18 maybe in isolation that's true, but that ignores the
19 entire history of this. It ignores that they've been
20 promising these documents for more than, you know, six
21 months.

22
23 And the other thing I will say about the
24 letter that defendants have filed, there's a line in it
25 that says --

1 PROCEEDINGS 82

2 THE COURT: You're talking about docket 381?

3 MX. GREEN: 381 that says, "Defendants do not take
4 the orders of this or any other Court lightly." As Your
5 Honor knows, this case is on a rocket docket with ten
6 consolidated cases, several of them purported class
7 actions, dozens of attorneys, with seemingly unlimited
8 time and resources for bullying and attempting to
9 intimidate defendants and their counsel. Of course, as the
10 Court probably remembers, just before that at ECF 347, the
11 Court had written there are many problems with the City's
12 response and I'm just kind of putting ellipses in here. The
13 City's letter improperly accuses plaintiffs' counsel of
14 acting unprofessionally without providing a basis for that
15 accusation. Such accusations shall not be repeated in the
16 future. It didn't even, their claim to be taking the Court's
17 orders seriously didn't even last a single sentence.

18 This is not the only order that we're running into
19 problems on. As the other letter I filed last week as a
20 status report, and that's, if you give me a second, sorry --

21 THE COURT: 380?

22 MX. GREEN: I believe that's right, yes, 380,
23 despite a clear Court order saying that they needed to be
24 ready to provide firm dates on documents they've known we
25 don't have since September, and really they've known

1 we weren't going to get since March, defendants were not
2 prepared to provide firm dates. We objected to it at the
3 first meet and confer that they cut off after about an hour
4 last week, and this week they were no more prepared to
5 provide us firm dates on any, you know, I -- I may have, if
6 I suggested they haven't started looking for anything, I
7 overstated it earlier, but it's very clear that for a large
8 number, if not a majority of the categories identified in
9 the September letter, defendants are considering how to
10 collect the documents for the first time in our meet
11 and confers. And then they need to go talk to the
12 people who organized those documents to find out how
13 long it's going to take to collect. When the Court has
14 already ordered them to provide firm deadlines, that's
15 just not okay. It's, it's extraordinarily frustrating
16 and it's obviously on the schedule grinding things to
17 a halt.

18
19 In terms of what we should do at this point,
20 to my mind there are three basic kinds of sanctions.
21 There are sanctions that are individual that are
22 intended to provide some kind of deterrent effects,
23 for example, fining an individual attorney \$500 in a
24 written decision --

25 THE COURT: Before, wait, wait, before we get

1 PROCEEDINGS 84

2 to the types of sanctions I need, I need greater
3 specificity on what you're talking about in terms of
4 what specific conduct is being sanctioned and what
5 letter is raising this. You're talking about sanctions
6 based on 380?

7 MX. GREEN: So I think that there are
8 appropriate sanctions based on 380 --

9 THE COURT: This is not, we're not going to do
10 sanctions based on 380, that's not, that was not keyed
11 up for this, I'm happy to talk about --

12 MX. GREEN: Understood. And I, I don't mean to
13 be suggesting that we're asking for it directly, I
14 think that I'm mentioning it because this is, at this
15 point, to say that this is not an intentional course
16 of conduct, it strains reality. I think that more
17 orders have been violated than have not. Just this
18 week, you know, after the Court's comments at the lack
19 of deposition, about the 48 hour rule, it was not
20 until Thursday at 4:00 for a, I'm sorry, Tuesday at
21 4:00 for a Thursday deposition that we got, we got the
22 documents that the Court had ordered for every
23 deponent. It's, there is a total lack of respect for
24 the Court's orders.

25 Now I think it is teed up with regard to the

1 PROCEEDINGS 85
2 prior protest motion, right, that it is that course of
3 conduct, that violation of a clear order to produce or
4 provide an explanation by way of affidavit with
5 somebody with personal knowledge as to why collection
6 was impossible, neither of which has been done even as
7 of today. That's what we're seeking sanctions on. But
8 I think the reason I am talking about the rest of it
9 is I think that bears very much on the severity of the
10 sanction that's warranted and kind of, I know we'll
11 talk in a moment about the kinds of sanctions, but the
12 point is the kind of sanction that will actually get
13 this case back on track.

14 THE COURT: Okay, so --

15 MX. GREEN: And I thought I should mention it
16 was because of our, the lack of documents on this that
17 we had to cancel the deposition that was scheduled for
18 Tuesday.

19 THE COURT: Because of lack of prior protest
20 documents?

21 MX. GREEN: Yes, correct.

22 THE COURT: Yes, okay. So, all right, so now
23 I know we're talking about 359, go ahead about the
24 types of sanctions.

25 MX. GREEN: Okay. So to my mind there are

basically three ways we can look at sanctions. There is, you know, the individual, I mean it's more than a slap on the wrist but a targeted, you know, Dara Weiss shall pay plaintiff \$500. I don't know that that's going to get us much of anywhere in this case. You know, certainly it's, I don't even think that most of this is Dara Weiss' fault, I think most of it's the client's fault, so I don't know that I think that would be appropriate.

Past there, there are two ways I see of looking at sanctions. First is kind of backward looking make whole sanctions. So those are things like ordering attorneys' fees, or perhaps even, you know, an order of preclusion when, you know, documents have been destroyed and there is no way to replace them. and them. And then there are forward looking sanctions, and this would be category three, that aim at fixing the problem going home, whether through deterrents or, you know, I know it wasn't phrased as a sanction, but things like you see at 317 that provide procedures that try to stop the problems from popping back up again.

You know, I thought a lot about what would work in this case. I think attorneys' fees, as we

1
2 understand it, are mandatory, so we'd ask for those.
3 But in terms of fixing the problem going forward,
4 here's what I think makes sense. In order to stop us
5 from ending up here and expending more unnecessary
6 motion practice when the City misses Court ordered and
7 agreed upon deadlines, we'd ask the Court to do
8 something like this.

9 First, if the City anticipates missing a
10 deadline, Court ordered or one agreed by from the
11 parties, they must submit an affidavit from the
12 appropriate custodian, so either NYPD or Mayor's
13 Office, at least two days before the deadline
14 explaining in detail why the deadline is impossible to
15 meet so the Court can decide whether an extension is
16 appropriate and actually have a chance to tell them
17 that the extension is inappropriate if it believes it
18 is. The Court can then also schedule a conference
19 requiring the person from the NYPD or Mayor's Office
20 to come to see if an extension is warranted if the
21 information in the affidavit is threadbare or not
22 sufficient.

23 Second, we think that at this point it makes
24 sense to have the Court so order any and all of the
25 parties' agreements about defendants' deadlines to

1 produce that we agree on at meet and confers or an email
2 that we exchange in lieu of meet and confers. In terms of
3 process, what I'd propose is that plaintiffs send an email
4 to defendants summing up any commitments that we believe
5 they've made and proposing language to be so ordered, and if
6 they don't object that (indiscernible) we can send it to the
7 Court can be so ordered. If they do object, then they can do
8 so by identifying what they disagree with, and for the
9 issues that aren't in dispute, then we can submit those to
10 the Court to be so ordered, for everything that is in
11 dispute, as with ECF 317 we'll make ourselves available
12 within 24 hours to discuss and otherwise defendant should
13 propose alternate language that they believe reflects the
14 agreements and we can go from there.

16 Third, if the City misses a deadline without
17 submitting an affidavit two days in advance, they must
18 submit a letter within one day of missing the deadline
19 explaining why they shouldn't be sanctioned for further
20 failures to comply with the Court's orders.

21 And then, finally, if defendants fail to submit a
22 letter, we think it would be appropriate for the Court to
23 set a presumed scale for progressive monetary sanctions for
24 each deadline missed. We're really hoping that won't be
25 necessary, but we think that having the system in place so

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2 that we're not coming to the Court and providing fair
3 warning to defendants, and specifically to, you know, to
4 counsel's clients that there will be consequences for
5 failure to follow the Court's orders is necessary at this
6 point to insure that we're not missing deadlines, both, you
7 know, committed to formally in the Court's meet and confer
8 process, and ordered by the Court.

9 THE COURT: Okay, gather this is the first time
10 Ms. Weiss is hearing this, Mx. Green?

11 MX. GREEN: That's correct, this is something
12 that, you know, we've spent some hours in common interest
13 meetings putting together, but yes.

14 THE COURT: Okay. All right, Ms. Weiss, I know
15 you're blindsided a little by this but I'll hear from you.

16 MS. WEISS: Yeah, you could say that. First of
17 all, I appreciate, Mx. Green, that you don't think sanctions
18 against me personally are appropriate here. But, you know,
19 Your Honor pointed out this is, this is new, and these
20 sort of sanctions. Mx. Green's letter talked about
21 attorneys' fees under Rule 37 and that was, frankly,
22 all we were prepared to discuss. You know, and, Your
23 Honor, this goes back to the argue with respect to
24 audit trails and our opposition to that. Despite Mx.
25 Green's contentions, none of this is purposeful or an

1 PROCEEDINGS 90

2 intentional disregarding of the Court's order. That's
3 just not something that is at issue in this case at
4 all.

5 And I also appreciate that Mx. Green said that
6 I, attorneys can go on vacation. I don't know
7 everything that happened while I was on vacation, I
8 know what happened when I came back. If there were any
9 orders that were, were missed, I sincerely apologize.
10 We're working now on getting the documents, we're,
11 it's going to be the discussion on Monday to make sure
12 that we get documents as quickly as possible. I'm not
13 sure that deposition had to be postponed because of
14 lack of these documents but, you know, plaintiffs
15 wanted to do that and that was fine with defendants,
16 it's understandable. There's a very tight amount of
17 time to do depositions, we're trying to fit in fifty-
18 some-odd in that time but I'm sure we'll be able to
19 reschedule it.

20 But, once again, this was in no way
21 intentional, it was just so many things coming in at
22 once and trying to keep up with it. And I made this
23 argument earlier in this conference and we rest on
24 that.

25 THE COURT: Here's the part I don't

1 PROCEEDINGS 91
2 understand, Ms. Weiss, I issue a Court order requiring
3 you to provide an affidavit and you literally just act
4 as if it doesn't exist. I mean we have a lot remedies,
5 you can move for reconsideration, you can object, but
6 why is violating it an option?

7 MS. WEISS: Well, Your Honor, it was not
8 intentionally violated. I was busy trying to get the
9 documents and the date, the date just passed and I
10 apologize that we didn't get the affidavit. It was, it
11 was a complete oversight. We --

12 THE COURT: Did you read -- I don't issue that
13 many orders, did you read the January 24th order?

14 MS. WEISS: Yes, I did, Your Honor.

15 THE COURT: Were you aware that you either had
16 to produce or provide this affidavit, did you
17 understand that from the order?

18 MS. WEISS: Yes, Your Honor, and I was working
19 on --

20 THE COURT: And at the time you read it did
21 you think, did you think I'm not going to have to do
22 that affidavit because I know we're all going to get
23 it done or did you think, you know, we're not going to
24 get this done by the 28th, I'm going to have to do an
25 affidavit? Did you think either of those things?

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2 MS. WEISS: I don't remember exactly what I
3 thought when I got the order, but I, I proceeded as if
4 I was attempting to get the documents.

5 THE COURT: You thought you would have it all
6 produced by the 28th?

7 MS. WEISS: I didn't know, I was looking
8 through documents to see what I could produce and then
9 the date simply passed.

10 MX. GREEN: Your Honor, that's also just not
11 true. In an email the day it was due, defendants wrote
12 saying we intend to produce prior protest documents on a
13 rolling basis. The idea that this passed without notice is,
14 I mean it's not believable on a Court order in the first
15 place. But in writing defendants said that they intended to
16 produce prior protest documents on a rolling basis, I
17 emailed them back saying that's not consistent with
18 the Court's order and didn't get a response.

19 THE COURT: What date did you email them?

20 MX. GREEN: They emailed me on the 28th and I
21 emailed them back on the 28th. It's quoted in my
22 letter and I'm happy to file --

23 THE COURT: You it that to Ms. Weiss?

24 MS. WEISS: Yes, Ms. Weiss and Ms. Robinson.

25 THE COURT: Well, Ms. Weiss, you got an email

1 PROCEEDINGS 93
2 saying that you had to produce this affidavit on the
3 28th, right, reminding you?

4 MS. WEISS: It's possible, I don't have my
5 emails from the 28th open here and I don't specifically
6 remember.

7 THE COURT: I mean this, we can't function if
8 you don't read and comply with Court orders, that's so
9 basic. I mean I'm just flabbergasted that I don't know
10 what you expect is going to happen if you don't comply
11 with a Court order or try to do something about if you
12 think you can't comply with it. I mean this one,
13 obviously, could have been complied with. I just, I, I
14 don't think I ever had a litigant quite so contentious
15 (indiscernible).

16 All right, I think I would like, Mx. Green, for
17 you to put this proposal you gave to me on future
18 sanctions in a letter and then I will -- file it as soon
19 as you can, Ms. Weiss, you can respond within two days,
20 and then I'll decide what I think is the best way going
21 forward as to those.

22 As to a Rule 37 sanction for violating my
23 extremely clear order of January 24th at docket number
24 359, the City is sanctioned by awarding the attorneys'
25 fees that Mx. Green had to go through to bring this to my

1
2 attention afterwards. So we're going to use the same
3 procedure that we used in the other case. Mx. Green, you
4 put together, you know, whatever your proposal is for the
5 fees, show it to Ms. Weiss, if you want to work it out on
6 your own, that's fine, otherwise you'll just send it to
7 me.

8 MX. GREEN: Yes, Your Honor. If I may clarify
9 what's the starting date on, just so we don't end up
10 in dispute about what's fair game for this --

11 THE COURT: After January 24th.

12 MX. GREEN: After the 24th, okay.

13 THE COURT: No, no, no, I take it back, it has
14 to be after the 28th, it has to be after the failure to
15 file the affidavit, it's post January 28th.

16 MX. GREEN: Understood.

17 THE COURT: And also relevant to this
18 particular issue.

19 MX. GREEN: No, of course, I suppose the only
20 thing I --

21 THE COURT: We're talking about basically the
22 369 but, you know, if there's some other work you did
23 on it, that's fine.

24 MX. GREEN: Well, Your Honor, I suppose what,
25 I understand the, I think that's 37(a) for violating

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2 the Court order, we'd also ask for 37(b) and I may
3 have mixed them up, sanctions related to, you know,
4 having to just follow-up for nearly a year on this
5 stuff and --

6 THE COURT: Yes, I understand, on the merits
7 of that I'm putting that off for now.

8 MX. GREEN: Understood, that's all I want to
9 clarify.

10 THE COURT: Okay.

11 MX. GREEN: I'm not going to argue and I just
12 wanted to know what I'm supposed to send them.

13 THE COURT: I'm glad you asked. Okay, what's
14 left, Mx. Green?

15 MX. GREEN: I suppose I think the right way to
16 handle what's been going on on the, kind of the bigger
17 picture stuff, I mean, you know, I understand that
18 perhaps I have blindsided Ms. Weiss with the specific
19 proposal but I think that we had asked to be, everyone
20 to be ready to talk today about the bigger picture
21 issue that it's not just Court orders that are getting
22 disregarded but, you know, defendants are not keeping
23 their commitments in the meet and confers, they're not
24 scheduling meet and confers, that just getting basic
25 information is pulling teeth here.

1 I think the proposed sanction handles that in
2 part. I suppose what I would ask in addition to that is just
3 if we could submit all of the commitments defendants have
4 made in the most recent meet and confers to be so ordered,
5 that might also help us move forward. Otherwise I think the
6 proposed prophylactic sanction is, covers that part of our
7 request.
8

9 THE COURT: I think it's a good idea to have Court
10 ordered deadlines where possible so I'll agree with you on
11 that. I guess there's a listing, and I can't remember what
12 docket number it is, of categories that the City, that
13 you're in discussions with the City on --

14 MX. GREEN: Correct.

15 THE COURT: Is it that they have made
16 commitments on some and you want them so ordered?

17 MX. GREEN: So what we would have to do here
18 because they did not come to that meet and confer
19 prepared to discuss firm dates, is they have
20 committed, that's 20 days from this Wednesday, they
21 will give us what we referred to as a date for a date.
22 Meaning, or, sorry, the 20 days from Wednesday was a
23 date for a date, meaning on that day we will get a
24 firm commitment. And, you know, I think in our view
25 the discovery schedule is kind of blown already at

1
2 this point, we're discussing separately requesting an
3 extension and, you know, rescheduling depositions as
4 is appropriate. But I think whatever comes out of
5 their mouth on the 20th we want that to be so ordered
6 and we want the fact that it has to come out of their
7 mouth, not the 20th, in 20 days, and the fact that it
8 has to come out of their mouth in 20 days also to be
9 so ordered.

10 THE COURT: That's fine. I'm a little
11 concerned about this notion that there's some
12 automatic extension of a discovery schedule that's
13 going to happen, is this going to affect other dates?

14 MX. GREEN: Your Honor, I believe it is, I
15 just, you know, we've been talking to the City about
16 it. I think the only other option is, you know, given
17 the prejudice we've had to be talking about preclusive
18 sanctions instead of prophylactic sanctions. I
19 understand --

20 THE COURT: Proving what exactly?

21 MX. GREEN: I mean the reason we didn't ask
22 for it specifically is because I can't think of
23 anything that wouldn't basically amount to striking
24 the City's answer. And I, you know, please do tell me
25 if I'm wrong but I assume you're not there.

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2 THE COURT: Well, no, I mean we have to, I
3 mean you're not stopping all depositions, I assume. I
4 assume there are some, I mean I can see how for high
5 level people there may need to be a moving to the end
6 but you're not talking about halting depositions, are
7 you?

8 MX. GREEN: We're not talking about halting
9 them, but because of the way we did things if, the
10 reason that we didn't finish discovery at the end of
11 last year is that the City, despite the Court's order
12 on when to produce documents and, you know, despite
13 the Court's order on when discovery ended had, without
14 telling anybody, decided they were going to produce
15 emails at either the end of December or beginning of
16 January, which was past the discovery end date. And
17 we only found that out because we moved to compel
18 those. And so, you know, what was left at that point
19 in terms of depositions was high level. There are
20 line level officers that we've discovered exist from
21 various discovery, from emails, from so on, and we had
22 noticed some of those, but really all that's left were
23 the depositions that in the first instance we decided
24 we were unable to take without significant document
25 production. And, of course, all of those decisions

1 PROCEEDINGS 99
2 were made on the assumption that we were going to get
3 everything on July 31st which didn't happen. And, you
4 know, even though the Court ordered -- sorry, please.

5 THE COURT: Well I'm trying to follow where we
6 are now. So some depositions are going to be
7 happening because they can go forward without this
8 production, there are others you want to wait on the
9 production for, is that it?

10 MX. GREEN: That's correct.

11 THE COURT: Okay. How many others are waiting
12 on the production?

13 MX. GREEN: I could not tell you offhand
14 where, I am happy to discuss with the common interest
15 group and put together a list of each category but I
16 am not prepared to say that right now.

17 THE COURT: I mean, again, the parties just
18 can't assume that if they agree to it that deadlines
19 are going to be extended, the Court has an interest,
20 too. So, you know, I'm not saying that some brief
21 extension isn't possible but we have to do what we can
22 to, you know, limit it.

23 MX. GREEN: I understand, Your Honor. I think
24 what I would like to just say on that, almost every
25 one of these motions that we're here on today were

1 PROCEEDINGS 100

2 filed, you know, about commitments the defendants missed
3 in mid-December at the beginning of January. And I
4 understand why it's taken so long to get here on a
5 conference, I do, but, you know, what we had asked for in
6 each of these letters was production in time to keep the
7 schedule and we're just --

8 THE COURT: I don't want to talk about the past or
9 blame, I want to talk about --

10 MX. GREEN: Yes.

11 THE COURT: Like one way to solve this is to say
12 20 days is too long, we need the commitments sooner and, you
13 know, if I think the commitment is so unreasonable then, you
14 know, if they're going to extend discovery more than, you
15 know, some brief period of time, then they are not going to
16 be acceptable.

17 MX. GREEN: Understood, Judge. I think, you know,
18 what we had been discussing between the parties was
19 (indiscernible) extension. Another problem that we have is
20 that despite, you know, really not trying to cast blame
21 here, but not every deponent is even on the schedule yet and
22 the Court had ordered that. And then defendants also, after
23 I think last week shuffled all of their 30(b)(6) deposition
24 designations and so, you know, that, that is also affecting
25 things and the need for an extension.

1 PROCEEDINGS 101

2 I understand what the Court's saying, that, you
3 know, we, we shouldn't assume that we're going to get an
4 extension but given --

5 THE COURT: No, I understand the problem. I mean
6 there's, you know, I mean if the City was actually able, I
7 mean the City had shot itself in the foot because it's not,
8 it's not been articulating burdens and it's possible that if
9 they articulated, you know, particular burdens in producing
10 things, I would say that's too much, I'd rather sacrifice
11 the documents, have the case, you know, go forward on what I
12 think is an appropriate schedule. That's, you know, an
13 option, there's a tradeoff to be made potentially between
14 producing documents and getting the case over with, and one
15 might sacrifice some category of documents to say, you know,
16 it's not worth waiting for these, better that the
17 depositions go forward and the case go forward. Or that the
18 documents only happen after the depositions and they can
19 only be able to use, be used without having questioned
20 deponents on them, that's probably the more likely option.

21 Do you see what I'm saying, Mx. Green, there's a
22 balancing here.

23 MX. GREEN: I do, Your Honor.

24 THE COURT: The plaintiffs have an interest in
25 moving the case along more than the City I would

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PROCEEDINGS

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think.

MX. GREEN: I think that's right. I think it ultimately comes down to prejudice though. You know, we have, we spent significant time at the beginning of last year mapping out a schedule that allowed us to take the depositions and get the discovery we wanted in a way that we thought allowed us to best prove our case. I think that there are very important documents and you're, of course, right that perfect productions are not something to hold up depositions for. But we are still missing just major, major crucial categories of documents, you know, and it's something that I think --

THE COURT: My point is those need to be prioritized. I mean I assume prior protests is one of those categories, right?

MX. GREEN: Absolutely.

THE COURT: Yes. And I guess there's others I haven't heard about.

MX. GREEN: That's correct, Your Honor.

THE COURT: In terms of being presented.

MX. GREEN: Right, or they were listed in the September letter that became the October motion that became the January motion.

1 PROCEEDINGS 103

2 THE COURT: Okay, but not, the merits have not
3 been presented to me.

4 MX. GREEN: Right, because presumably
5 defendants were agreeing to produce them, they just
6 haven't.

7 THE COURT: Right. Yes, I mean you need to be
8 sensitive to the possibility that some categories need
9 to be frontloaded so that depositions can happen,
10 others can wait because, I mean if the City ever
11 showed it they would be too burdensome to be produced
12 before the deposition and the plaintiffs might just
13 have to wait in order to have a schedule when the case
14 moves forward. So I just want to throw that in the
15 hopper as a thought that you need to consider.

16 MX. GREEN: Yes, Your Honor, and I, you know,
17 I would respectfully suggest that we have considered
18 it and we've considered it I think pretty thoroughly
19 at a lot of different stages in this case --

20 THE COURT: Well, I mean I'm not saying --

21 MX. GREEN: We've taken fifty-some-odd
22 depositions, there's a deposition going on right now.

23 THE COURT: I'm not saying you're slacking,
24 what I'm saying is that for purposes of seeking an
25 extension, as someone said earlier, perfect could be

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the enemy of the good which is to say there are some categories of documents we can wait till after the depositions. Because, you know, we won't be able to make the case to Judge Gorenstein that the City should have to produce all of it in time to have this go on the schedule that I'm contemplated.

MX. GREEN: Understood. I think the best thing to do then is, you know, for the documents we care about we will, you know, I suppose propose that they be ordered produced sooner rather than later and that might involve renegotiating some of the commitments we've made and then otherwise we'll propose a new schedule and request an extension in the appropriate way.

THE COURT: All right. I mean I think we're not thinking about schedule extensions, I was thinking more in the nature of, you know, 30 days, 45 days, I think what you're talking about is a lot longer than I was ever contemplating or would be expected to approve of.

MX. GREEN: I mean, Your Honor, I guess all I would say is if we count the days from when we were supposed to get documents and when we moved on them, which would be mid-December, so December 15th, 16th,

1 PROCEEDINGS 105

2 17th and, you know, what I think the Court has signaled
3 is the shortest period it's willing to order which is
4 15 days from now, we're talking about --

5 THE COURT: Wait, wait, wait, 15 days from
6 now, I'm sorry, I lost you?

7 MX. GREEN: When we were discussing various
8 productions earlier in this call the Court was
9 ordering, was suggesting it was going to order, you
10 know, two-week type deadlines, not five-day or three-
11 day deadlines. And so, you know, if you had the 15
12 days at the end of last year, the 15 days from now,
13 and the time it's been since January 1st, that's 60
14 days --

15 THE COURT: Okay, right, I'm not sure that's
16 necessarily the way to think about it but, fine,
17 understood, maybe you'll be able to make the case for
18 60 days. I mean how many, how much, how many days of
19 depositions are contemplated once you get these
20 documents?

21 MX. GREEN: I think we have something like 40
22 depositions outstanding, maybe less than that, at the
23 high level.

24 THE COURT: And how long are you expecting it
25 to take you to do 40 depositions?

1 PROCEEDINGS 106

2 MX. GREEN: Well I think the time schedule
3 extends into May I want to say, so about three months
4 total.

5 THE COURT: Right, well that's another place
6 where efficiency, I mean other efficiencies could be
7 achieved, right? I mean the current deadline is, in
8 fact, April 22nd.

9 MX. GREEN: Then I apologize because I had
10 gotten the deadlines wrong, obviously the schedule for
11 the most part complies with that although defendants
12 have scheduled, I think there are a couple of
13 witnesses that defendants have given updates that are past
14 the discovery deadlines more.

15 THE COURT: Right. I mean if there is any play in,
16 you know, liability and deadlines, that's something to be
17 considered. Okay, well, I think, are we done, Mx. Green?

18 MX. GREEN: I believe so. I think, you know, the
19 only other thing I would say is if we end up not having
20 crucial documents at depositions and we can't get time
21 to get those, I think we, we would end up
22 contemplating another motion that takes, you know,
23 curative sanctions in the form of some kind of
24 preclusion.

25 THE COURT: Preclusion of what?

1 PROCEEDINGS 107

2 MX. GREEN: I mean maybe precluding them from
3 arguing probable cause on, you know, the arrests of
4 people over 2020, in the course of something like
5 that.

6 THE COURT: All right, well, we're, I mean
7 preclusion is always an option depending upon what the
8 City does. But nothing to be addressed right now.

9 MX. GREEN: Understood.

10 THE COURT: Ms. Weiss, anything you want to
11 say in response to what you heard?

12 MS. WEISS: No, Your Honor, if and when these
13 issues come up we'll certainly address them. I know
14 that Mx. Green was just sort of throwing things out
15 there now, but I don't think they need to be addressed
16 at this moment by the City.

17 THE COURT: The date for the date is really
18 bothering me. It's just too long. When, Ms. Green,
19 what do you calculate this promise date to be?

20 MX. GREEN: It's 20 days from Wednesday and if
21 you give me a moment I can look at a calendar and see
22 what that actually means.

23 THE COURT: Twenty days from this past
24 Wednesday?

25 MX. GREEN: Yes, so that's going to be the 1st

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PROCEEDINGS

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of March.

MS. WEISS: Your Honor, we had originally proposed it earlier but during the earlier week the NYPD liaison, the managing attorney of the unit, is going to be on vacation, so we extended it until she got back from vacation because she's really the one who needs to get and would have the information.

THE COURT: (indiscernible)?

MS. WEISS: It's the week after Presidents Day so I think that's the week of the 21st.

MX. GREEN: Right, defendants did not want to be responsible for something at all that week so we moved it to the next week.

THE COURT: I mean is any work being done on actually looking for the documents, I mean, or is this date to announce when you're going to be looking in the future, Ms. Weiss?

MS. WEISS: No, it's a, it's a date to give plaintiffs a firm date of when the documents will be produced. Our liaison is reaching out --

THE COURT: The work on searching for them has to happen immediately, is that happening or not?

MS. WEISS: It is, our liaison has already reached out to or is in the process, the meet and

1 PROCEEDINGS 109

2 confer just happened on Wednesday, the process of
3 reaching out to all the different units who would be
4 in possession of these documents or these types of
5 documents to have them looking and she will then let
6 us and plaintiffs know when each of these units will
7 have the documents all collected.

8 THE COURT: Right, and also they should be
9 collecting it, too, I mean --

10 MS. WEISS: Well, yes --

11 THE COURT: That should be started.

12 MS. WEISS: Yes, that is the part of it, I
13 can't guarantee that she has been able to reach and
14 speak to all of the units as of now, you know, I don't
15 know what people's days off are or people's
16 availability --

17 THE COURT: Well make clear that the
18 collection process has to start, it's not just an
19 exercise to figure out when, how long it would take if
20 it started on March 1st.

21 MS. WEISS: Yes, of course.

22 THE COURT: Start right now.

23 MS. WEISS: Absolutely.

24 THE COURT: And that they may be called in to
25 say what they've done on particular searches.

1 PROCEEDINGS 110

2 MS. WEISS: Yes, Your Honor.

3 THE COURT: So maybe people -- okay, Mx. Green
4 anything else?

5 MX. GREEN: Given all of that, perhaps the
6 best thing to do is just set the deadline that
7 everything needs to be produced or an affidavit needs
8 to be produced by March 1st?

9 THE COURT: Well I, you mean actually produce
10 the documents by March 1st or give --

11 MX. GREEN: Yes.

12 THE COURT: I mean they're being required to
13 meet with you on March 1st, right?

14 MX. GREEN: They're being --

15 THE COURT: Or not?

16 MX. GREEN: The previous agreement which I
17 think, you know, I think assumes perhaps wrongly that
18 we would be able to get significant further time from
19 the Court is, because defendants didn't come prepared as
20 ordered to provide firm dates at a meet and confer and, you
21 know, it's not the first time they were ordered, they were
22 ordered to do that in October, as well --

23 THE COURT: I'm happy to order them to provide
24 firm dates on March 1st, is that what you're asking or
25 something else?

1 PROCEEDINGS 111

2 MX. GREEN: Well, no, I mean, you know, I think
3 that's what we've agreed to do, I think the problem is if
4 we're not going to be able to get the significant discovery
5 extension that what we agreed to in that meet and
6 confer doesn't work.

7 THE COURT: Well, I mean it depends what you
8 mean by significant.

9 MX. GREEN: Sixty, ninety days.

10 THE COURT: It depends what these dates are.
11 So I, let me think about this, I mean I, I'm flying
12 blind here because I would have to go through the
13 categories and understand what the issues are. Let me
14 just think about this. I mean if the assumption is,
15 right, that you're going to produce the documents on
16 March 1st unless it's impossible to do so? Ms. Weiss
17 is maybe on mute.

18 MS. WEISS: I'm sorry, I was on mute. The
19 intention was not to produce the documents on March 1st
20 unless, of course, we have them, but the intention was
21 to be able to have full and thorough conversations
22 with the folks who are searching for the documents to
23 get a firm date by which they know they could get the
24 documents to us and then we, in turn, can turn them
25 over to plaintiff.

1 PROCEEDINGS 112

2 THE COURT: Mx. Green, the categories of
3 documents are listed where right now?

4 MX. GREEN: They are in the September 10th
5 letter that's attached to the first motion on this,
6 give me a second and I'll give you a docket number.
7 It's going to be one of the 354s, it's 354-2 --

8 THE COURT: Yes.

9 MX. GREEN: 342-2 provides the list and the
10 list is provided between pages 5 and 8, and this was
11 the motion that was made on, initially, or this is a
12 letter that was filed on September 10th and then
13 attached to a motion made in October. And then again
14 attached to a motion made in January.

15 THE COURT: Yes, January, right.

16 MX. GREEN: And the January motion came
17 because we weren't able to complete a process where
18 the Court had ordered us to meet and confer and get
19 firm dates for production.

20 THE COURT: I don't understand how the City
21 gets a letter like this in September and doesn't know
22 now what its position it in terms of the ability to
23 produce them. Ms. Weiss, how does that happen?

24 MS. WEISS: Your Honor, we responded to the
25 letter, plaintiffs were not satisfied with our

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2 response so we continued to engage in meet and confers
3 to try to reach, to reach a conclusion that the
4 parties would be satisfied with. This has been going
5 on and we have been responding. There had been a
6 series of meet and confers, the City provided
7 materials and information to plaintiffs, we haven't
8 heard anything for quite a while and then once they
9 started contacting us, again, we started engaging in
10 further meet and confers. And this week --

11 THE COURT: All right, this is what we're
12 going to do on this. By, on March 1st you need to
13 produce something, either produce these documents or
14 give a letter to the other side that says when you're
15 producing the, and if it's more than two weeks away
16 you need to have a full explanation of what the
17 problem is.

18 MS. WEISS: Okay.

19 THE COURT: If we do that, if you get
20 everything, if you get everything, maybe, Mx. Green,
21 where does that take us?

22 MX. GREEN: I think that that probably means
23 that we'll, you know, assuming we actually do get
24 everything and there isn't an objection that shows up
25 for the first time, say, to privilege that we didn't

1 PROCEEDINGS 114

2 expect, that, I think that gives us some ability to,
3 well, let's see, that would put us in March. I think
4 maybe that means that with a 90 or 100, maybe 90 day
5 extension of the discovery deadline we can keep things
6 going, assuming that there are no scheduling issues.
7 Like, for example, that the mayor is not, or the
8 former mayor is not available for an entire month.

9 THE COURT: That's just too long.

10 MX. GREEN: I mean, Your Honor, I think, you
11 know, one of the things that struck me in what Ms.
12 Weiss just said, when explaining why they couldn't
13 give us dates today it was, well, we just had this
14 meet and confer on Wednesday. All we did at the meet
15 and confer is go through this list, I said the name of
16 the document request and read it and asked what the
17 status was. And what we got on virtually every one is,
18 okay, well those documents live here, I will go make a
19 request. You know, it's very clear that defendants did
20 not view this as something they needed to do until the
21 Court specifically ordered it.

22 MS. WEISS: That's, that's not accurate at
23 all.

24 THE COURT: Go ahead, Ms. Weiss. I mean for
25 each of these categories have people been working on

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PROCEEDINGS

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getting them or not?

MS. WEISS: For some of the categories, absolutely but, Your Honor, a lot of them were either unclear or plaintiffs -- defendants objected to and then we withdrew objections, it's not as clear cut. And I don't have all my notes from that meet and confer with me so I can't tell you everything that happened, unfortunately, I didn't think that that was necessary to have with me today for today's conference. But I think Mx. Green is generalizing quite a bit.

THE COURT: All right, let's, let's leave it, let's -- give me a second. Whatever this order is, Mx. Green, I mean how is it phrased, I mean is it all of documents on this list to which objection has not been made and is that, does that make it clear?

MX. GREEN: I think that the answer is, you know, produce, shall produce all documents identified in document identifier or shall, you know, I mean, you know, end up with the basic thing that we should have gotten in the first document, the first set of objections which is state what's being withheld and why, if anything is being withheld. Obviously, we also need a privilege log on that day if there is anything

1 PROCEEDINGS 116

2 being withheld and we need, but, you know, I think
3 that these are all things and we picked these
4 categories because they were not ones where defendants
5 stated they were withholding documents.

6 MS. WEISS: Your Honor, I also just want to --

7 THE COURT: Some of these have been produced,
8 right, I mean, or it's already been covered by things
9 we've talked about.

10 MS. WEISS: Yes, Your Honor.

11 MX. GREEN: Some and in part. But, for
12 example, let's take stop reports, that's document
13 request 10, we talked for the first time on Wednesday
14 about defendants gathering stop reports. There is no
15 objection to producing stop reports, stop reports are
16 something that's required, as I understand it, by a
17 Court order in *Floyd* which is a stop and frisk case,
18 and, you know, we just don't know when they are going
19 to get them to us. And, you know, that item has been
20 on this list since September 10th and it took until the
21 beginning of February to even have them start
22 searching for them.

23 MS. WEISS: Your Honor, if I may just point
24 out that the September 10th letter, if I'm not
25 mistaken, referred to one, one of plaintiffs',

1 PROCEEDINGS 117

2 consolidated plaintiffs' discovery requests. The meet
3 and confer that we had this past week extended to
4 their second or supplemental request which had 101
5 requests, it was not part of the motion. We discussed
6 it anyway because we understand that there are items
7 in there that might not have yet been located. So not
8 everything here was at any point the subject of a
9 motion. Not to say that we're not --

10 MX. GREEN: Your Honor, that's not true, we
11 moved on the second consolidated request, too, because
12 they didn't, they didn't give us requests that
13 complied with the 2015 amendment. And the Court
14 ordered us to meet and confer on those immediately at
15 the beginning of January, it has been the subject of a
16 motion.

17 MS. WEISS: Okay, I apologize, that is right,
18 I -- that's right.

19 THE COURT: I keep trying, I keep trying to
20 get the City to just state what they're producing and
21 what they're objecting to, and you're saying Mx.
22 Green, you haven't even gotten that?

23 MX. GREEN: I mean I think we've gotten closer
24 on the second consolidated request. Again, you know,
25 some of what we were agreeing to, perhaps wrongly, we

1 PROCEEDINGS 118

2 assumed that we'd be able to, given what's happened,
3 ask for an extension. But, you know, we're certainly
4 not at the end of that, we don't have a privilege log
5 for, you know, substantial privilege assertions and,
6 you know, it's also true that a lot of the content of
7 our meet and confers gets lost between them. In that
8 particular instance, Ms. Weiss decided that there were
9 no privilege assertions that warranted a privilege log
10 despite the fact that they're withholding massive
11 amounts of documents on privilege bases, and we had to
12 just go back through on Wednesday the meet and confer
13 we'd had just the previous week to remind her that
14 there are privilege assertions she's making.

15 MS. WEISS: Some of which were withdrawn, that
16 was discussed.

17 MX. GREEN: Right, no, some were withdrawn but
18 then her response to having committed to getting us a
19 privilege log by February 4th and then not doing it
20 was, well, I don't think that we need it anymore. And
21 then, you know --

22 MS. WEISS: No, that's --

23 MX. GREEN: It's absurd.

24 THE COURT: All right --

25 MX. GREEN: And, you know, this is not just,

1 PROCEEDINGS 119

2 these are not the only requests, right? As you know,
3 we just ordered today responses to individual RFPs
4 that are still outstanding, there was just an
5 agreement reached on the motion by Mr. Rankin at the
6 very beginning that, you know, we've agreed on, but
7 like there are -- like the amount of material we're
8 missing is massive.

9 THE COURT: All right, I'm prepared to do
10 this. I'm prepared to order the production by 30 days
11 from now which is going to be March 11th. If I get a
12 request for, you know, 60 or maybe something a little
13 more extension on the depositions, we'll try to figure
14 that out. I just, I'm just trying to figure out, the
15 thing I'm ordering is what pages of September, the
16 September 10th letter?

17 MX. GREEN: So that's going to be pages 5
18 through 8.

19 THE COURT: That's what's the subject of the
20 March 1st conference?

21 MX. GREEN: Yes. Yes.

22 MS. WEISS: Your Honor, there was a lot more,
23 I think I'm confused.

24 MX. GREEN: Let me propose this, Your Honor,
25 we can draft an order, if defendants commit to giving us

1 PROCEEDINGS 120

2 approval or any objections within 24 hours, we can probably
3 get that out to the Court by the end of next week.

4 THE COURT: And order to what exactly is being
5 produced by March --

6 MX. GREEN: Yes, exactly. Exactly.

7 THE COURT: Okay, I mean, did I say the 8th, what
8 did I say?

9 MS. WEISS: You said the 11th initially.

10 THE COURT: The 11th, yes.

11 MX. GREEN: I mean, you know, Your Honor, I just
12 would say, right, most of these motions were made
13 January 1st, 2nd, 3rd, 4th so, you know, this is us
14 finally getting documents 60 days after we've moved to
15 compel them, you know, it's a lot of time.

16 THE COURT: All right, so you'll give me a
17 proposed order on that.

18 MX. GREEN: Yes, and can we ask that the City
19 just either give us objections with specificity and
20 propose alternate language within 24 hours of getting
21 our draft which we'll get to them by close of business
22 or by the end of the night Monday?

23 MS. WEISS: That's fine.

24 THE COURT: Okay, you'll respond on Tuesday.

25 Okay, I'm a little concerned that, you know, I've done

1 PROCEEDINGS 121

2 a lot of oral orders and they still count. I wouldn't
3 mind someone putting it in a form that I could sign.
4 You don't have to worry about 370 and 374 because I
5 have those, but to the extent there were other orders,
6 I think it would be a big help to give me a draft
7 order. So, for example, you know, producing the audit
8 trail logs and I forget what date, I think I had two
9 weeks, and then a brief sanctions order, same thing
10 for you, Mx. Green, for 369 --

11 MX. GREEN: Right, and the proposed sanction
12 order, prophylactic order that we discussed, Your
13 Honor.

14 THE COURT: Well that's a proposal.

15 MX. GREEN: Oh, sorry, yes.

16 THE COURT: I want to implement what I said
17 today, not merely by my having said it, but also in a
18 written order.

19 MX. GREEN: Understood.

20 THE COURT: (indiscernible) I actually ordered
21 and that's what I'd just like to get a draft of. And
22 you can just email it to me, cc the other side, if
23 they want to complain about it they can give their own
24 order.

25 MX. GREEN: Understood. And I assume it makes

1 PROCEEDINGS 122

2 sense to separate --

3 THE COURT: Anything I ordered other than 370
4 and 374.

5 MX. GREEN: Right, and I assume it makes sense
6 to send two separate orders, one being the things you
7 actually ordered and then, second, the proposed
8 sanctions order on --

9 THE COURT: Yes, your proposed sanctions order
10 should be filed on ECF.

11 MX. GREEN: Okay, perfect.

12 THE COURT: What I'm talking about you can
13 just email to me because it's merely implementing
14 something I've already said. Anything that I haven't
15 ordered you should file on ECF.

16 MX. GREEN: Understood.

17 THE COURT: Okay, so I think we're done.
18 Anything else, Mx. Green?

19 MX. GREEN: No, Judge.

20 THE COURT: Ms. Weiss, anything?

21 MS. WEISS: No, Your Honor.

22 THE COURT: Okay, thank you, everyone. Good-
23 bye.

24 (Whereupon the matter is adjourned.)

25

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In Re: New York City Policing During Summer 2020 Demonstrations, docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

CAROLE LUDWIG

Date: February 15, 2022